EIGHTY-SEVENTH DAY

WEDNESDAY, MAY 28, 1997

PROCEEDINGS

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

The President announced that a quorum of the Senate was present.

James Morris, former Senate Doorkeeper, offered the invocation as follows:

> May we stand in silence for a moment, mindful of those families who suffered such tragic and devasting losses during yesterday's storm.
>
> Almighty God, let us begin this morning as we should each day with a prayer and petition for Your undergirding grace and express our gratitude for the measure of strength only You can provide.
>
> We assemble, inspired by this great institution, the Texas Senate. We stand in awe this morning of this magnificent symbol of strength, the State Capitol.
>
> Our Father, we have been taught God governs in the affairs of men and women and our prayer today is that You will guide and direct the Members and the leadership in these final hours as they confront issues yet to be resolved. May patience and wisdom prevail as they distinguish wishes from need, facts from fiction, and midst the pressures of the job with Your help be their best selves and do their best work. In Your name I pray. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 104

On motion of Senator Whitmire and by unanimous consent, Senator Bivins will be shown as Co-author of **SCR 104**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Wednesday, May 28, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 312, Designating October 15, 1997, and October 21, 1998, as Legislators in Schools Day.

SB 17, Relating to the powers and duties of county hospital authorities.
(Amended)

SB 133, Relating to discipline of students in public schools.
(Committee Substitute/Amended)

SB 149, Relating to performance evaluation of tenured faculty at certain institutions of higher education.
(Committee Substitute/Amended)

SB 414, Relating to certain advance directives for medical treatment; providing administrative penalties.
(Amended)

SB 453, Relating to the appeal of certain interlocutory orders.

SB 581, Relating to the cost of operation and administration of the state lottery.
(Amended)

SB 583, Relating to the construction or repair of facilities by school districts and institutions of higher education.
(Committee Substitute)

SB 586, Relating to the creation of the Guardianship Advisory Board.
(Committee Substitute)

SB 609, Relating to the regulation of pharmacies and pharmacists; providing a penalty.
(Amended)

SB 839, Relating to allowing a governmental body to hold a meeting by videoconference call under certain circumstances.
(Amended)

SB 861, Relating to the administration of franchise taxes; imposing penalties.
(Amended)

SB 862, Relating to the administration, collection, and enforcement by the comptroller of various taxes and fees.
(Amended)

SB 885, Relating to limitations on certain covenants.
(Amended)

SB 1036, Relating to the charitable contributions of state employees.

SB 1069, Relating to the release and use of certain personal information from motor vehicle records; providing a criminal penalty.
(Amended)

SB 1387, Relating to benefits for certain roof damage on property insured through the Texas Catastrophe Property Insurance Association.

SB 1499, Relating to the regulation and policy forms of certain lines of insurance.

SB 1678, Relating to certain procedures concerning landlords and tenants of residential real property.
(Amended)

SB 1814, Relating to modifications of the official cotton growers' boll weevil eradication program.
(Committee Substitute/Amended)

SB 1852, Relating to the creation and operation of the Texas Affordable Housing Task Force.

SB 1857, Relating to transferring certain responsibilities of the Texas Natural Resource Conservation Commission related to certain radioactive materials to the Texas Department of Health.

SB 1873, Relating to public school finance, including the abolition of the foundation school fund budget committee.
(Amended)

SCR 109, Recalling **HJR 104** from the house to the senate.

SCR 110, Instructing the enrolling clerk of the senate to correct **SB 29**.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2777

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2777** have

had the same under consideration, and beg to report it back with the recommendation that it do pass.

RATLIFF	JUNELL
ZAFFIRINI	NAISHTAT
NELSON	BERLANGA
MONCRIEF	KRUSEE
	EILAND
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Truan in Chair)

GUESTS PRESENTED

The Presiding Officer introduced to the Senate Willacy County Commissioner Israel Tamez.

The Senate welcomed Commissioner Tamez.

CAPITOL PHYSICIAN

The "Doctor for the Day," Dr. James C. Womack, accompanied by his son Adam, of Bandera, was introduced to the Senate by Senator Wentworth.

The Senate expressed appreciation and gratitude to Dr. Womack for participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

HOUSE CONCURRENT RESOLUTION 307

The Presiding Officer laid before the Senate the following resolution:

HCR 307, Instructing the enrolling clerk of the house of representatives to correct **HB 2101**.

CAIN

The resolution was read.

On motion of Senator Cain and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 299

The Presiding Officer laid before the Senate the following resolution:

HCR 299, Instructing the enrolling clerk of the house of representatives to make a correction to **HB 1144**.

BROWN

The resolution was read.

On motion of Senator Brown and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 33 ADOPTED

Senator Moncrief called from the President's table the Conference Committee Report on **SJR 33**. The Conference Committee Report was read and was filed with the Senate on Monday, May 26, 1997.

On motion of Senator Moncrief, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 84 WITH HOUSE AMENDMENTS

Senator Moncrief called **SB 84** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 84** as follows:

(1) Strike SECTION 1.05 of Article 1 of the bill and substitute the following:

SECTION 1.05. Not later than October 1, 1997, the governor shall appoint the initial members of the Nursing Facility Administrators Advisory Committee in accordance with Section 242.303, Health and Safety Code, as added by this article. The governor shall designate three members for a term expiring on February 1, 1999, three members for a term expiring on February 1, 2001, and three members for a term expiring on February 1, 2003.

Strike SECTION 2.03 of Article 2 of the bill and substitute the following:

SECTION 2.03. Not later than one month after the effective date of this article, the governor shall appoint the initial members of the Texas Board of Nursing Facility Administrators in accordance with Section 242.302, Health and Safety Code, as added by this article. The governor shall designate the terms of the initial members so that three members' terms expire February 1 of each odd-numbered year and so that succeeding members serve six-year staggered terms.

Floor Amendment No. 2

Amend **SB 84** in Section 2.01 of the bill, proposed Section 242.304(5), Health and Safety Code (page 30, lines 19-20, house committee report), by striking ", unless the absence is excused by a majority vote of the board".

The amendments were read.

On motion of Senator Moncrief, the Senate concurred in the House amendments to **SB 84** by a viva voce vote.

SENATE BILL 1247 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1247** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1247** as follows:

(1) Insert the following sections, appropriately numbered:

SECTION ___. Section 142.006, Health and Safety Code, is amended by amending Subsections (d) and (e) and adding Subsections (f) and (g) to read as follows:

(d) The department shall [~~may~~] find that a home and community support services agency that provides only long-term care Medicaid waiver services that are publicly funded has satisfied the requirements for licensing under this chapter if the agency is certified and monitored by a state agency that has developed standards that ensure the health and safety of service recipients [~~certification standards that meet or exceed the requirements for licensing under this chapter. A license fee is required at the time of a license application~~].

(e) The department shall find that a home and community support services agency that provides home health, hospice, or personal assistance services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation and is monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation has satisfied the requirements for licensing.

(f) The department shall adopt the applicable standards of the agency that certifies and monitors the home and community support services agency for use in issuing a license under Subsection (d) or (e). When applying for a license under Subsection (d) or (e) and annually before the license is renewed, a person must provide the department with documentation issued by the agency that certifies and monitors the home and community support services agency that demonstrates that the person complies with applicable standards. A license fee is required at the time of application.

(g) The license must designate the types of services that the home and community support services agency is authorized to provide at or from the designated place of business.

SECTION ___. Section 142.009, Health and Safety Code, is amended by amending Subsections (i), (j), and (k) and adding Subsection (l) to read as follows:

(i) A home and community support services agency licensed under Section 142.006(d) or (e) is not subject to surveys conducted by licensing personnel of the department to meet the requirements of this chapter.

(j) Except as provided by Subsections (h), (i), and (l) [~~(k)~~], an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) [~~(j)~~] If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys required for each of

the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) [~~(k)~~] The department and other state agencies that are under the Health and Human Services Commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The Health and Human Services Commission shall review the recommendation of the council relating to the memorandum of understanding before considering approval. The memorandum of understanding must be approved by the commission.

(2) In the recital to SECTION 5 of the bill (page 8, line 19, House Committee Printing), strike "Sections 142.017 through 142.0175" and substitute "Sections 142.017 through 142.0176".

(3) In SECTION 5 of the bill (page 15, between lines 19 and 20, House Committee Printing), following Section 142.0175, insert new Section 142.0176 to read as follows:

Sec. 142.0176. CERTAIN AGENCIES EXCEPTED. (a) Notwithstanding any other provision of this chapter, the department may not assess an administrative penalty against a home and community support services agency licensed under Section 142.006(d) or (e) that is certified and monitored by a state agency.

(b) The agencies licensed under Sections 142.006(d) and (e) are subject to sanctions or penalties by the state agency that certifies and monitors the services, and each state agency shall inform the department within five working days of any sanction or adverse action taken against a home and community support services agency licensed under Section 142.006(d) or (e). The department may take enforcement action under this chapter, except for the assessment of administrative penalties, against a home and community support services agency licensed under Section 142.006(d) or (e).

(4) Renumber subsequent sections of the bill appropriately.

Floor Amendment No. 1 on Third Reading

Amend **SB 1247** on third reading by striking Section 142.017, Health and Safety Code, as added by SECTION 5 of the bill (page 8, lines 21-25, through page 10, lines 1-9, house committee printing), and substituting the following:

Sec. 142.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty shall be not less than $100 or more than $1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate violation.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) The department by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

Floor Amendment No. 2 on Third Reading

Amend **SB 1247** on third reading as follows:

(1) In SECTION 6 of the bill, strike Subdivision (3) of amended Section 142.021, Health and Safety Code (page 16, lines 6-8, House Committee Printing), and substitute the following:

"(3) [~~performs duties as a qualified dialysis technician within the scope authorized by board rules;~~]".

(2) In SECTION 6 of the bill, in Subdivision (4) of amended Section 142.021, Health and Safety Code (page 16, line 9, House Committee Printing), strike "(4)" and substitute "[~~(4)~~]".

(3) In SECTION 6 of the bill, in Subdivision (5) of amended Section 142.021, Health and Safety Code (page 16, line 14, House Committee Printing), strike "(5)" and substitute "(4) [~~(5)~~]".

The amendments were read.

On motion of Senator Madla, the Senate concurred in the House amendments to **SB 1247** by a viva voce vote.

SENATE BILL 1810 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1810** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1810**, House committee report, as follows:

(1) On page 1, line 23, strike "employ" and substitute "designate".

(2) On page 2, line 4, strike "appropriations from the legislature and other".

(3) On page 3, strike lines 3 through 5.

(4) On page 9, line 26, insert "better use of federal" between "for" and "funding".

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 1810** by a viva voce vote.

SENATE BILL 162 WITH HOUSE AMENDMENTS

Senator Barrientos called **SB 162** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 162** as follows:

(1) Add a new article to the bill, appropriately numbered, to read as follows:

ARTICLE __. COMPOSITION OF
THE TEXAS DIABETES COUNCIL

SECTION ___.01. Section 103.005, Health and Safety Code, is amended to read as follows:

Sec. 103.005. TERMS. (a) Council members appointed by the governor serve for staggered six-year [~~four-year~~] terms, with the terms of four [~~six citizen~~] members [~~and two agency representatives~~] expiring February 1 of each odd-numbered year [~~and the terms of six citizen members and three agency representatives expiring February 1 of each even-numbered year~~].

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

SECTION ____ .02. Section 103.008(a), Health and Safety Code, is amended to read as follows:

(a) The office of a member appointed by an agency becomes vacant when the person terminates employment with the agency or when the agency elects to replace the person as provided by Section 103.005.

SECTION ___.03. (a) The Texas Diabetes Council is abolished on the effective date of this Act. As soon as possible after the effective date of this Act, the governor and each state agency listed in Section 103.002, as appropriate, shall appoint a new Texas Diabetes Council to accomplish the membership plan for the commission established by this Act. This subsection does not prohibit the governor or a state agency from appointing to the council a person serving on the council on the effective date of this Act.

(b) In making appointments to the Texas Diabetes Council under Subsection (a) of this section, the governor shall appoint four members for terms expiring February 1, 1999, four members for terms expiring February 1, 2001, and four members for terms expiring February 1, 2003.

(2) Renumber articles and sections of the bill appropriately.

Floor Amendment No. 2

Amend **SB 162** as follows:

On page 3, following line 25, add a new subsection "(3)" that incorporates this language, "Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.", and renumber the lines of the subsequent text accordingly.

The amendments were read.

On motion of Senator Barrientos, the Senate concurred in the House amendments to **SB 162** by a viva voce vote.

(President in Chair)

SENATE BILL 670 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 670** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 670** in SECTION 1 of the bill, in proposed Section 162.601(b), Family Code (House committee report page 1, line 16), by striking "must equal" and substituting "may not exceed".

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 670** by a viva voce vote.

BILLS AND RESOLUTION SIGNED

The President announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

SB 79, SB 95, SB 135, SB 143, SB 220, SB 310, SB 325, SB 333, SB 455, SB 474, SB 495, SB 502, SB 631, SB 672, SB 882, SB 1137, SB 1354, SB 1514, SB 1566, SB 1568, SB 1596, SB 1624, SB 1929, SJR 17

(Senator Shapiro in Chair)

SENATE BILL 102 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 102** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 102** as follows:

(1) In Section 773.121(b), Health and Safety Code, as added by SECTION 1 of the bill (page 1, lines 12 and 13, House committee printing), strike "received under Sections 541.425(b) and 522.029(e), Transportation Code" and substitute "appropriated to the credit of the fund".

(2) Strike SECTIONS 2, 3, 4, and 5 of the bill (page 5, line 7 through page 7, line 5, House Committee Printing), and substitute the following SECTIONS:

SECTION 2. Section 771.071, Health and Safety Code, is amended by adding Subsection (g), to read as follows:

(g) Notwithstanding any other law, revenue derived from the fees imposed under this section may be appropriated to the emergency medical services and trauma care system fund established by Section 773.121. The comptroller shall transfer funds appropriated in accordance with this section to the emergency medical services and trauma care system fund to be used only for the purposes described by Section 773.121 through 773.124.

(3) Renumber subsequent sections of the bill appropriately.

Floor Amendment No. 2

Amend **SB 102** as follows:

(1) In Section 773.122(c), Health and Safety Code, as added by SECTION 1 of the bill (page 2, line 4, House committee printing), in the first sentence, between "to fund" and "the cost of", insert ", in connection with an effort to provide coordination with the appropriate trauma support area,".

(2) Following SECTION 4 of the bill (page 7, between lines 1 and 2, House Committee Printing), add the following new SECTION:

SECTION 5. Not later than December 1, 2000, the Texas Department of Health shall submit to the lieutenant governor and the speaker of the house of representatives a report concerning the use of money under Section 773.122, Health and Safety Code, as added by this Act, and any recommended changes to law to ensure appropriate funding and coordination of services.

(3) Renumber subsequent sections of the bill appropriately.

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 102** by a viva voce vote.

SENATE BILL 55 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 55** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 55** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of the sale, distribution, and use of tobacco products; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS

SECTION 1.01. Subchapter H, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER H. DISTRIBUTION [~~SALE~~] OF CIGARETTES OR TOBACCO PRODUCTS [~~TO MINORS~~]

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Permit holder" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes or tobacco products.

(4) "Retailer" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE [~~MINORS~~] PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence [~~as a commercial enterprise~~]:

(1) sells, gives, or causes to be sold or given a cigarette or [~~other~~] tobacco product to someone who [~~the person knows~~] is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette or [~~other~~] tobacco product to another person who[~~, knowing that the person receiving the cigarette or other tobacco product~~] intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) [~~(c)~~] It is a defense to prosecution under Subsection (a)(1) [~~this section~~] that the person to whom the cigarette or [~~other~~] tobacco product was sold or given presented to the defendant [~~an~~] apparently valid proof of [~~Texas driver's license or an~~] identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains [~~card, issued by the Department of Public Safety and containing~~] a physical description and photograph consistent with the person's appearance, purports [~~that purported~~] to establish that the person is [~~was~~] 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

Sec. 161.083. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE. (a) Pursuant to federal regulation under 21 C.F.R. Section 897.14(b), a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an *apparently valid proof* of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 154.1142 or 155.0592, Tax Code.

Sec. 161.084 [~~161.082~~]. WARNING NOTICE. (a) Each person who sells cigarettes or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A [~~MAXIMUM~~] FINE OF UP TO $500, [~~$200~~] MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number).

(c) The comptroller [~~board~~] by rule shall determine the design and size of the sign.

(d) The comptroller [~~department~~] on request shall provide the sign without charge to any person who sells cigarettes or tobacco [~~cigarette~~] products. The comptroller [~~department~~] may provide the sign without charge to [~~cigarette~~] distributors of cigarettes or tobacco products or wholesale dealers of cigarettes or tobacco [~~cigarette~~] products in this state for distribution to persons who sell cigarettes or tobacco [~~cigarette~~] products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person intentionally fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each permit holder shall notify each individual employed by that permit holder who is to be engaged in retail sales of cigarettes or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 18 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that an intentional violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The permit holder shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A permit holder required by this section to notify employees commits an offense if the permit holder fails, on demand of a peace officer or agent of the comptroller, to provide the notice prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the notice required by Subsection (a). Proof must be shown to the comptroller or an agent of the comptroller within 72 hours of the offense.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to the cigarettes or tobacco products; or

(2) install or maintain a vending machine containing cigarettes or tobacco products.

(b) Subsection (a) does not apply to a facility or business that is not open to persons younger than 18 years of age at any time.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation

of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS. (a) A person may not distribute to persons younger than 18 years of age:

(1) a free sample of a cigarette or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product.

(b) Except as provided by Subsection (c), a permit holder may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that a recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2) and (b) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with county sheriffs and municipal chiefs of police and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by county sheriffs and municipal chiefs of police to enforce this subchapter in a manner that can reasonably be expected to reduce the extent to which cigarettes and tobacco products are sold or distributed to persons who are younger than 18 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes and tobacco products are sold or distributed to ensure compliance with this subchapter. The comptroller shall rely, to the fullest extent possible, on sheriffs or chiefs of police or their employees to enforce this subchapter.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter;

(2) at the time of the inspection, the minor decoy is younger than 17 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of cigarettes or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

ARTICLE 2. ADVERTISING OF
CIGARETTES OR TOBACCO PRODUCTS

SECTION 2.01. Subchapter K, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER K. PROHIBITION OF CERTAIN
CIGARETTE OR TOBACCO PRODUCT ADVERTISING; FEE

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "School" means a private or public elementary or secondary school.

(4) [~~(3)~~] "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) [~~(4)~~] "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a [~~A~~] sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 [~~500~~] feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to[~~:~~

[~~(1)~~] a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period[~~; or~~

[~~(2) a contract for a cigarette or other tobacco product advertisement entered into before August 26, 1991~~]].

(d) In Subsection (c)(1), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee and deposit the money as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

(1) production costs;

(2) media cost; and

(3) cost of sales or commissions paid to an agency or broker.

Sec. 161.124. USE OF ADVERTISING FEE. (a) The comptroller shall deposit the fee collected under Section 161.123 to a special account in the state treasury called the tobacco education and enforcement education fund.

(b) Money in the account may be appropriated only for administration and enforcement of this section, enforcement of law relating to cigarettes and tobacco products, and an education advertising campaign relating to cigarettes and tobacco products.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the amount of fees due and owing;

(2) attempted concealment of misconduct by the person who committed the violation;

(3) premeditated misconduct by the person who committed the violation;

(4) intentional misconduct by the person who committed the violation;

(5) the motive of the person who committed the violation;

(6) prior misconduct of a similar or related nature by the person who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official grading statutes or regulations pertaining to the misconduct;

(8) violation by the person who committed the violation of an order of the comptroller;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

ARTICLE 3. YOUTH TOBACCO USE

SECTION 3.01. Chapter 161, Health and Safety Code, is amended by adding Subchapters N and O to read as follows:

SUBCHAPTER N. TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 18 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or

(2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:

(1) an adult parent, a guardian, or a spouse of the individual; or

(2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(d) An offense under this section is a Class C misdemeanor.

Sec. 161.253. TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend a tobacco awareness program approved by the comptroller. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the defendant.

(b) On request, a tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to a tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of tobacco-related community service instead of attending the tobacco awareness program.

(d) The tobacco awareness program and the tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the tobacco awareness program or the tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall execute the sentence but may reduce the fine imposed to not less than half the fine previously imposed by the court.

Sec. 161.254. DRIVER'S LICENSE SUSPENSION OR DENIAL. (a) If the defendant does not provide the evidence required under Section 161.253(e) within the period specified by that subsection, the court shall order the Department of Public Safety to suspend or deny issuance of any driver's license or permit to the defendant. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.

(b) The Department of Public Safety shall send to the defendant notice of court action under Subsection (a) by certified mail, return receipt requested. The notice must include the date of the order and the reason for the order and must specify the period of the suspension or denial.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

(1) impose a requirement that a defendant attend a tobacco awareness program or perform tobacco-related community service; or

(2) order the suspension or denial of a driver's license or permit.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

[Sections 161.258-161.300 reserved for expansion]

SUBCHAPTER O. PREVENTION OF TOBACCO USE BY MINORS

Sec. 161.301. TOBACCO USE PUBLIC AWARENESS CAMPAIGN. (a) The comptroller shall develop and implement a public awareness campaign designed to reduce tobacco use by minors in this state. The campaign may use advertisements or similar media to provide educational information about tobacco use.

(b) The comptroller may contract with another person to develop and implement the public awareness campaign, except that the comptroller may not contract with any person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, or any partner, employee, employer, relative, contractor, consultant, or related entity of such a person or entity.

ARTICLE 4. RELATED TAX CODE PROVISIONS

SECTION 4.01. (a) Section 154.111, Tax Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) $300 [~~$100~~] for a bonded agent's permit;

(2) $300 [~~$100~~] for a distributor's permit;

(3) $200 [~~$50~~] for a wholesaler's permit; [~~and~~]

(4) $15 for each permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller [~~treasurer~~] under Sections 154.101 and 154.110; and

(5) $180 for a retailer's permit.

(g) Notwithstanding Subsection (b)(5), an application for a retailer's permit issued or renewed before September 1, 1999, must be accompanied by a fee of $125. This subsection expires December 31, 1999.

(b) Section 154.111(c), Tax Code, is repealed.

SECTION 4.02. Section 154.121, Tax Code, is amended to read as follows:

Sec. 154.121. REVENUE. (a) Except as provided by Subsection (b), revenue [~~Revenue~~] from the sale of permits to distributors, wholesalers, and bonded agents is allocated in the same manner as other revenue allocated by Subchapter J.

(b) Revenue from the sale of retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. The money may be appropriated first to the comptroller for administration of licensing of retailers under this chapter or Chapter 155.

(c) If, after any appropriation is made under Subsection (b), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the comptroller for administration and enforcement of Subchapters H, K, and N, Chapter 161, Health and Safety Code.

(d) If, after any appropriation is made under Subsections (b) and (c), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the comptroller to administer the comptroller's responsibilities under Subchapter O, Chapter 161, Health and Safety Code.

SECTION 4.03. Subchapter D, Chapter 154, Tax Code, is amended by adding Section 154.1142 to read as follows:

Sec. 154.1142. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS. (a) A retailer is subject to disciplinary action as provided by this section if:

(1) an agent or employee of the retailer commits an offense under Subchapter H, Chapter 161, Health and Safety Code; and

(2) the retailer, with criminal negligence, failed to prevent the offense through adequate supervision and training of the agent or employee.

(b) If the comptroller finds, after notice and hearing as provided by this subchapter, that a permit holder has violated Subchapter H or K, Chapter 161, Health and Safety Code, at a place of business for which a permit is issued, the comptroller may suspend the permit for that place of business or administratively assess a fine as follows:

(1) if the permit holder has not been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $500;

(2) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business once during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $750; and

(3) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business at least twice during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $1,000 or suspend the permit for that place of business for not more than three days.

(c) Except as provided by Section 154.1143, if the permit holder has been found to have violated Section 161.082(b), Health and Safety Code, on four or more previous and separate occasions at the same place of business during the preceding 12 months, the comptroller shall revoke the permit.

(d) A retailer whose permit has been revoked under this section may not apply for a retailer's permit for the same place of business before the expiration of six months after the effective date of the revocation.

SECTION 4.04. Subchapter D, Chapter 154, Tax Code, is amended by adding Section 154.1143 to read as follows:

Sec. 154.1143. ACTIONS OF EMPLOYEE. (a) For purposes of Subchapter H, Chapter 161, Health and Safety Code, and the provisions of this code relating to the sale or delivery of cigarettes or tobacco products to a minor, the comptroller may suspend a permit but may not revoke the permit under Section 154.1142(c) if the comptroller finds that:

(1) the employer has not violated Section 161.082(b), Health and Safety Code, more than seven times at the place of business for which the permit is issued in the 24-month period preceding the violation in question;

(2) the employer requires its employees to attend a comptroller-approved seller training program;

(3) the employee has actually attended a comptroller-approved seller training program; and

(4) the employer has not directly or indirectly encouraged the employee to violate the law.

(b) The comptroller shall adopt rules or policies establishing the minimum requirements for approved seller training programs. On application, the comptroller shall approve seller training programs meeting the requirements that are sponsored privately or by public community colleges. The comptroller may charge an application fee in an amount necessary to defray the expense of processing the application.

(c) The comptroller may approve under this section a seller training program sponsored by a permit holder for the purpose of training its employees without regard to whether the employees are located at the same place of business. This subsection applies only to a permit holder who employs at least 100 persons at any one time during the permit year who sell cigarettes or tobacco products.

SECTION 4.05. Section 154.504, Tax Code, is amended to read as follows:

Sec. 154.504. POSSESSION OF QUANTITIES LESS THAN INDIVIDUAL PACKAGE. A person commits an offense and is subject to

a $100 fine if the person sells cigarettes in quantities less than an individual package containing at least 20 cigarettes.

SECTION 4.06. (a) Section 155.049, Tax Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) $300 [~~$100~~] for a bonded agent's permit;

(2) $300 [~~$100~~] for a distributor's permit;

(3) $200 [~~$50~~] for a wholesaler's permit; [~~and~~]

(4) $15 for each permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller [~~treasurer~~] under Sections 155.041 and 155.048; and

(5) $180 for a retailer's permit.

(g) Notwithstanding Subsection (b)(5), an application for a retailer's permit issued or renewed before September 1, 1999, must be accompanied by a fee of $125. This subsection expires December 31, 1999.

(b) Section 155.049(c), Tax Code, is repealed.

SECTION 4.07. Section 155.058, Tax Code, is amended to read as follows:

Sec. 155.058. REVENUE. (a) Except as provided by Subsection (b), revenue [~~Revenue~~] from the sale of permits to distributors, wholesalers, and bonded agents is allocated in the same manner that other revenue is allocated by Subchapter H.

(b) Revenue from the sale of retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. The money may be appropriated first to the comptroller for administration of licensing of retailers under this chapter or Chapter 154.

(c) If, after any appropriation is made under Subsection (b), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the comptroller for administration and enforcement of Subchapters H, K, and N, Chapter 161, Health and Safety Code.

(d) If, after any appropriation is made under Subsections (b) and (c), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the comptroller to administer the comptroller's responsibilities under Subchapter O, Chapter 161, Health and Safety Code.

SECTION 4.08. Subchapter C, Chapter 155, Tax Code, is amended by adding Section 155.0592 to read as follows:

Sec. 155.0592. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS. (a) A retailer is subject to disciplinary action as provided by this section if:

(1) an agent or employee of the retailer commits an offense under Subchapter H, Chapter 161, Health and Safety Code; and

(2) the retailer, with criminal negligence, failed to prevent the offense through adequate supervision and training of the agent or employee.

(b) If the comptroller finds, after notice and hearing as provided by this subchapter, that a permit holder has violated Subchapter H or K, Chapter 161, Health and Safety Code, at a place of business for which a permit is issued, the

comptroller may suspend the permit for that place of business or administratively assess a fine as follows:

(1) if the permit holder has not been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $500;

(2) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business once during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $750; and

(3) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business at least twice during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed $1,000 or suspend the permit for that place of business for not more than three days.

(c) Except as provided by Section 155.0593, if the permit holder has been found to have violated Section 161.082(b), Health and Safety Code, on four or more previous and separate occasions at the same place of business during the preceding 12 months, the comptroller shall revoke the permit.

(d) A retailer whose permit has been revoked under this section may not apply for a retailer's permit for the same place of business before the expiration of six months after the effective date of the revocation.

SECTION 4.09. Subchapter C, Chapter 155, Tax Code, is amended by adding Section 155.0593 to read as follows:

Sec. 155.0593. ACTIONS OF EMPLOYEE. (a) For purposes of Subchapter H, Chapter 161, Health and Safety Code, and the provisions of this code relating to the sale or delivery of cigarettes or tobacco products to a minor, the comptroller may suspend a permit but may not revoke the permit under Section 155.0592 if the comptroller finds that:

(1) the employer has not violated Section 161.082(b), Health and Safety Code, more than seven times at the place of business for which the permit is issued in the 24-month period preceding the violation in question;

(2) the employer requires its employees to attend a comptroller-approved seller training program;

(3) the employee has actually attended a comptroller-approved seller training program; and

(4) the employer has not directly or indirectly encouraged the employee to violate the law.

(b) The comptroller shall adopt rules or policies establishing the minimum requirements for approved seller training programs. On application, the comptroller shall approve seller training programs meeting the requirements that are sponsored privately or by public community colleges. The comptroller may charge an application fee in an amount necessary to defray the expense of processing the application.

(c) The comptroller may approve under this section a seller training program sponsored by a permit holder for the purpose of training its employees without regard to whether the employees are located at the same place of business. This subsection applies only to a permit holder who

employs at least 100 persons at any one time during the permit year who sell cigarettes or tobacco products.

ARTICLE 5. FEDERAL WAIVER;
TRANSITION; EFFECTIVE DATE; EMERGENCY CLAUSE

SECTION 5.01. (a) If, before the changes in law made by this Act to Subchapter H or K, Health and Safety Code, take effect, the comptroller determines that an exemption from federal preemption from the federal Food and Drug Administration is necessary for implementation, the comptroller shall request the exemption and may delay implementing the affected provision of law until the exemption is granted.

(b) If a provision of law affected by a delay in implementation under Subsection (a) of this section contains a criminal penalty:

(1) the comptroller shall publish in the Texas Register notice of:

(A) the delay in implementation; and

(B) the grant of an exemption from preemption requested under Subsection (a); and

(2) the provision takes effect on the 90th day after the date that notice of the grant of an exemption is published under Paragraph (B) of Subdivision (1) of this subsection.

SECTION 5.02. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 161.083, 161.085, and 161.086, Health and Safety Code, and Subchapter N, Chapter 161, Health and Safety Code, as added by this Act, take effect January 1, 1998.

(c) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(d) This Act applies to the sale or distribution of coupons, cigarettes, or tobacco products on or after the effective date of this Act. The sale or distribution of a coupon, cigarette, or tobacco product before the effective date of this Act is governed by the law in effect when the sale or distribution was made, and that law is continued in effect for that purpose.

(e) The increase in the amount of a fee as provided by Section 154.111 or 155.049, Tax Code, as amended by this Act, takes effect for and is applicable to the permit years beginning on or after March 1, 1998, and June 1, 1998, as applicable.

SECTION 5.03. Notwithstanding any other law, the implementation and execution of the programs established by the change in law made by this Act are contingent on the availability of funds for those programs, as determined by the comptroller, from:

(1) the permit fee imposed on retailers under Chapters 154 and 155, Tax Code, as amended by this Act; and

(2) the fee on outdoor advertising of cigarette and tobacco products imposed under Subchapter K, Chapter 161, Health and Safety Code, as amended by this Act.

SECTION 5.04. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 55** in SECTION 1.01 of the bill, amended Section 161.087(b), Health and Safety Code (committee printing, page 7, line 16), by striking "that a recipient" and substituting "that such a recipient".

Floor Amendment No. 2

Amend **CSSB 55** in SECTION 1 of the bill, in Subchapter H, Chapter 161, Health and Safety Code (page 10, between lines 9 and 10, House Committee Printing), by inserting the following:

Sec. 161.0901. REPORT OF OFFICE OF SMOKING AND HEALTH. (a) Not later than January 5th of each odd-numbered year the Office of Smoking and Health of the department shall report to the governor, lieutenant governor, and the speaker of the house of representatives on the status of smoking and the use of tobacco and tobacco products in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;

(2) a baseline of statistics and analysis regarding illegal tobacco sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) tobacco controls and initiatives by the Office of Smoking and Health of the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the Office of Smoking and Health of the department to decrease the use of tobacco and tobacco products;

(5) the educational programs of the Office of Smoking and Health of the department and the effectiveness of those programs; and

(6) the incidence of use of tobacco and tobacco products by regions in this state, including use of cigarettes and tobacco products by ethnicity.

Floor Amendment No. 4

Amend **CSSB 55** as follows:

(1) In Section 161.301(a), Health and Safety Code, as added by SECTION 3.01 of the bill (page 18, line 3, House committee printing), strike "The comptroller" and substitute "The commissioner of public health".

(2) In Section 161.301, Health and Safety Code, as added by SECTION 3.01 of the bill (page 18, lines 7-13, House Committee Printing) strike Subsection (b) and substitute the following:

(b) The commissioner of public health may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The commissioner of public health may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code;

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(3) In Section 154.121(d), Tax Code, as added by SECTION 4.02 of the bill (page 19, lines 24-25, House committee printing), strike "to the comptroller to administer the comptroller's responsibilities" and substitute "to the Texas Department of Health to administer the commissioner of public health's responsibilities".

(4) In Section 155.058(d), Tax Code, as added by SECTION 4.07 of the bill (page 24, lines 8-9, House committee printing), strike "to the comptroller to administer the comptroller's responsibilities" and substitute "to the Texas Department of Health to administer the commissioner of public health's responsibilities".

Amendment No. 5

Amend **CSSB 55** in Article 3 of the bill, in SECTION 3.01, as follows:

(1) In proposed 161.252(d), Health and Safety Code (House committee printing, page 15, line 22), strike "a Class C misdemeanor" and substitute "punishable by a fine not to exceed $250".

(2) In proposed Section 161.253, Health and Safety Code (House committee printing, page 16, lines 18-21), strike Subsection (f) and substitute the following:

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the

offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Floor Amendment No. 6

Amend **CSSB 55** in Section 161.086, Health and Safety Code, as added by SECTION 1.01 of the bill, by striking Subsection (b) (page 6, lines 17-19, House committee printing), and substituting the following:

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 18 years of age at any time; or

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 55** on third reading as follows:

(1) In SECTION 3.01 of the bill, in added Section 161.253(a), Health and Safety Code, strike "approved by the comptroller" and substitute "approved by the commissioner of public health".

(2) In SECTION 4.02 of the bill, in amended Section 154.121, Tax Code, at the end of subsection (c), between "Health and Safety Code" and the period, insert ", and to the Texas Department of Health, for the administration and enforcement of Section 161.253, Health and Safety Code".

(3) In SECTION 4.07 of the bill, in amended Section 155.058, Tax Code, at the end of Subsection (c), between "Health and Safety Code" and the period, insert ", and to the Texas Department of Health, for the administration and enforcement of Section 161.253, Health and Safety Code".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 55** on third reading as follows:

(1) In Section 161.124(b), Health and Safety Code, as added by Section 2.01 of the bill (page 12, lines 25-26, House Committee Printing), strike "an education advertising campaign relating to cigarettes and tobacco products" and substitute "the education advertising campaign and grant program established under Subchapter O, Chapter 161, Health and Safety Code".

(2) Following Section 161.301, Health and Safety Code, as added by SECTION 3.01 of the bill (page 18, between lines 13 and 14, House Committee Printing), insert the following:

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of tobacco use by the group's members.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in

addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

(3) In Section 154.121(d), Tax Code, as added by Section 4.02 of the bill (page 19, lines 25-26, House committee printing), strike "Subchapter O, Chapter 161," and substitute "Section 161.301,".

(4) In Section 154.121, Tax Code, as amended by Section 4.02 of the bill (page 19, between lines 26 and 27, House committee printing), insert a new Subsection (e) to read as follows:

(e) If, after any appropriation is made under Subsections (b), (c), and (d), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the appropriate entity to administer that entity's responsibilities under Section 161.302, Health and Safety Code.

(5) In Section 155.058(d), Tax Code, as added by Section 4.07 of the bill (page 24, lines 9-10, House committee printing strike "Subchapter O, Chapter 161." and substitute "Section 161.301,".

(6) In Section 155.058, Tax Code, as amended by Section 4.07 of the bill (page 24, between lines 10 and 11, House committee printing), insert a new Subsection (e) to read as follows:

(e) If, after any appropriation is made under Subsections (b), (c), and (d), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the appropriate entity to administer that entity's responsibilities under Section 161.302, Health and Safety Code."

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 55** by a viva voce vote.

(President in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 190 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 190**. The Conference Committee Report was read and was filed with the Senate on Monday, May 26, 1997.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 34 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 34** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 34** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 162.012(a), Family Code, is amended to read as follows:

(a) The validity of an adoption order is not subject to attack after six months after [~~the second anniversary of~~] the date the order was rendered.

SECTION 2. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1085 to read as follows:

Sec. 201.1085. DISCRETIONARY APPOINTMENT OF MASTER FOR CHILD PROTECTION CASES. The presiding judge of an administrative judicial region may appoint a master for a court handling child protection cases if the court needs assistance in order to process the cases in a reasonable time.

SECTION 3. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.008 to read as follows:

Sec. 262.008. ABANDONED CHILDREN. (a) An authorized representative of the Department of Protective and Regulatory Services may assume the care, control, and custody of a child:

(1) who is abandoned without identification or a means for identifying the child; and

(2) whose identity cannot be ascertained by the exercise of reasonable diligence.

(b) The department shall immediately file a suit to terminate the parent-child relationship of a child under Subsection (a).

(c) A child for whom possession is assumed under this section need not be delivered to the court except on the order of the court.

SECTION 4. Subsection (c), Section 262.201, Family Code, is amended to read as follows:

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall:

(1) issue an appropriate temporary order under Chapter 105; and

(2) inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 5. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.006 to read as follows:

Sec. 263.006. WARNING TO PARENTS. At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the department as temporary managing conservator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 6. Subchapter B, Chapter 263, Family Code, is amended by adding Section 263.1015 to read as follows:

Sec. 263.1015. SERVICE PLAN NOT REQUIRED. A service plan is not required under this subchapter in a suit brought by the department for the termination of the parent-child relationship for a child who has been abandoned without identification and whose identity cannot be determined.

SECTION 7. Section 263.201, Family Code, is amended to read as follows:

Sec. 263.201. STATUS HEARING; TIME. Not later than the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of a full adversary hearing under Chapter 262~~], the court shall hold a status hearing to review the child's status and the permanency plan developed for the child.

SECTION 8. The heading to Subchapter D, Chapter 263, Family Code, is amended to read as follows:

SUBCHAPTER D. PERMANENCY [~~REVIEW~~] HEARINGS

SECTION 9. Subsections (a) and (b), Section 263.301, Family Code, are amended to read as follows:

(a) Notice of a permanency [~~review~~] hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days' notice of a permanency hearing [~~to review a child's placement~~] and are entitled to present evidence and be heard at the hearing:

(1) the department;

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the child; [~~and~~]

(5) an attorney ad litem appointed for the child under Chapter 107;

(6) a volunteer advocate appointed for the child under Chapter 107; and

(7) any other person or agency named by the court to have an interest in the child's welfare.

SECTION 10. Section 263.302, Family Code, is amended to read as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The [~~court may dispense with the attendance of the~~] child shall attend each permanency hearing unless the court specifically excuses the child's attendance. Failure by the child to attend a hearing does not affect the validity of an order rendered at the [~~at a placement review~~] hearing.

SECTION 11. Subchapter D, Chapter 263, Family Code, is amended by adding Section 263.3025 to read as follows:

Sec. 263.3025. PERMANENCY PLAN. (a) The department shall prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. The department shall give a copy of the plan to each person entitled to notice under Section 263.301(b) not later than the 10th day before the date of the child's first permanency hearing.

(b) In addition to the requirements of the department rules governing permanency planning, the permanency plan must contain the information required to be included in a permanency progress report under Section 263.303.

(c) The department shall modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 12. Section 263.303, Family Code, is amended to read as follows:

Sec. 263.303. PERMANENCY PROGRESS [~~STATUS~~] REPORT. (a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency [~~review~~] hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency progress [~~status~~] report unless the court orders a different period for providing the report [~~or orders that a report is not required for a specific hearing~~].

(b) The permanency progress [~~status~~] report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate [~~all relevant information concerning each of the guidelines under this chapter and~~] the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; and

(F) [~~(2) recommend one of the following actions:~~

[~~(A) that the child be returned to the child's home and that the suit be dismissed;~~

[~~(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;~~

[~~(C) that the child remain in substitute care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;~~

[~~(D) that the child remain in substitute care for a specified period and that termination of parental rights be sought under this code;~~

[~~(E) that a child who has resided in substitute care for at least 18 months be placed or remain in permanent or long-term substitute care because of the child's special needs or circumstances; or~~

[~~(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and~~

[~~(3)~~] with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under Subsection (b). A response must be filed not later than the third day before the date of the hearing.

SECTION 13. Section 263.304, Family Code, is amended to read as follows:

Sec. 263.304. INITIAL PERMANENCY [~~REVIEW~~] HEARING; TIME. Not later than the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of the conclusion of the full adversary hearing under Chapter 262~~], the court shall hold a permanency hearing to review the status of, and permanency plan for, the [~~a~~] child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter [~~in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan~~].

SECTION 14. Section 263.305, Family Code, is amended to read as follows:

Sec. 263.305. SUBSEQUENT PERMANENCY [~~REVIEW~~] HEARINGS. A subsequent permanency hearing before entry of a final order [~~Subsequent review hearings~~] shall be held [~~not earlier than 5 1/2 months and~~] not later than the 120th day [~~seven months~~] after the date of the last permanency hearing in the suit. For [~~unless, for~~] good cause shown or on the court's own motion, the court may order more frequent hearings [~~by a party, an earlier hearing is approved by the court~~].

SECTION 15. Section 263.306, Family Code, is amended to read as follows:

Sec. 263.306. PERMANENCY [~~REVIEW~~] HEARINGS: PROCEDURE. At each permanency [~~review~~] hearing the court shall [~~determine~~]:

(1) identify [~~the identity of~~] all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent;

(3) return the child to the parent or parents if [~~whether~~] the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(4) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(5) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(6) evaluate the parties' compliance with temporary orders and [~~(3) the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in~~] the service plan;

(7) determine [~~(4)~~] whether:

(A) the child continues to need substitute care;

(B) [~~and whether~~] the child's current placement is appropriate for meeting the child's needs; and

(C) other plans or services are needed to meet the child's special needs or circumstances;

(8) if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(9) if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;

(10) determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter; and

(11) determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

[~~(5) a date for achieving the child's permanency plan;~~

[~~(6) if the child has been in substitute care for not less than 18 months, the future status of the child and the appropriateness of the date by which the child may return home and whether to render further appropriate orders;~~

[~~(7) if the child is in substitute care outside the state, whether the out-of-state placement continues to be appropriate and in the best interest of the child;~~

[~~(8) whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;~~

~~[(9) whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;~~

~~[(10) whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;~~

~~[(11) whether a long-term substitute care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term substitute care placement and if the child is placed in institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;~~

~~[(12) whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;~~

~~[(13) whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;~~

~~[(14) whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and~~

~~[(15) whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.~~]

SECTION 16. Chapter 263, Family Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. FINAL ORDER
FOR CHILD UNDER DEPARTMENT CARE

Sec. 263.401. DISMISSAL AFTER ONE YEAR; EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension order must also:

(1) schedule the new date for dismissal of the suit; and

(2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.

(c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.

(d) For purposes of this section, a final order is an order that:

(1) requires that a child be returned to the child's parent;

(2) names a relative of the child or another person as the child's managing conservator;

(3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or

(4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Sec. 263.402. RETURN OF CHILD TO PARENT OR PLACEMENT WITH RELATIVE. (a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to return the child to the child's parent or to place the child with a relative of the child;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit.

(c) If a child placed with a parent or relative under this section must be moved from that home by the department before the dismissal of the suit or the rendering of a final order, the court shall, at the time of the move, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved under this subsection, whichever date is later.

(d) If the court renders an order under this section, the court must include in the order specific findings regarding the grounds for the order.

Sec. 263.403. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR WITHOUT TERMINATING PARENTAL RIGHTS. (a) The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

[Sections 263.404-263.500 reserved for expansion]

SUBCHAPTER F. PLACEMENT REVIEW HEARINGS

Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a placement review hearing at least once every six months until the child becomes an adult.

(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult.

(c) Notice of a placement review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing.

(d) The following are entitled to not less than 10 days' notice of a placement review hearing:

(1) the department;

(2) the foster parent or director of the group home or institution in which the child is residing;

(3) each parent of the child;

(4) each possessory conservator or guardian of the child;

(5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and

(6) any other person or agency named by the court as having an interest in the child's welfare.

(e) The court may dispense with the requirement that the child attend a placement review hearing.

Sec. 263.502. PLACEMENT REVIEW REPORT. (a) Not later than the 10th day before the date set for a placement review hearing, the department or other authorized agency shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(b) For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.

(c) The placement review report must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) identify the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living if the services are available in the community;

(4) identify other plans or services that are needed to meet the child's special needs or circumstances; and

(5) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At each placement review hearing, the court shall determine whether:

(1) the child's current placement is appropriate for meeting the child's needs;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

SECTION 17. Section 264.009, Family Code, is amended to read as follows:

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT. (a) In [~~Except as provided by Subsection (b), in~~] any action under this code [~~title~~], the department shall be represented in court by [~~the~~]:

(1) the county [~~prosecuting~~] attorney [~~who represents the state in criminal cases in the district or county court~~] of the county where the action is brought, unless the district attorney or criminal district attorney elects to provide representation; or

(2) if the case is one in which a conflict of interest or special circumstances exist, an attorney employed by the department or who has contracted with the department under Subsection (c) to provide representation [~~attorney general~~].

(b) In a county with a population of 2,800,000 or more, in an action under this code [~~title~~], the department shall be represented in court by [~~the~~]:

(1) the attorney who represents the state in civil cases in the district or county court of the county where the action is brought; or

(2) if the case is one in which a conflict of interest or special circumstances exists, an attorney employed by the department or who has contracted with the department under Subsection (c) to provide representation [~~attorney general~~].

(c) The department may contract with a county attorney, a district attorney, a criminal district attorney, the attorney general, or a private attorney to provide reimbursement from any available state or federal funds of the costs of representing the department in an action under this code.

SECTION 18. Subchapter B, Chapter 264, Family Code, is amended by adding Sections 264.111 and 264.112 to read as follows:

Sec. 264.111. ADOPTION AND SUBSTITUTE INFORMATION. (a) The department shall maintain in the department's central database information concerning children placed in the department's custody, including:

(1) for each formal adoption of a child in this state:

(A) the length of time between the date of the permanency plan decision of adoption and the date of the actual placement of the child with an adoptive family;

(B) the length of time between the date of the placement of the child for adoption and the date a final order of adoption was rendered;

(C) if the child returned to the department's custody after the date a final order of adoption was rendered for the child, the time between the date the final adoption order was rendered and the date the child returned to the department's custody; and

(D) for the adoptive family of a child under Paragraph (C), whether the family used postadoption program services before the date the child returned to the department's custody; and

(2) for each placement of a child in substitute care:

(A) the level of care the child was determined to require;

(B) whether the child was placed in an appropriate setting based on the level of care determined for the child;

(C) the number of moves for the child in substitute care and the reasons for moving the child;

(D) the length of stay in substitute care for the child from the date of initial placement to the date of approval of a permanency plan for the child;

(E) the length of time between the date of approval of a permanency plan for the child and the date of achieving the plan;

(F) whether the child's permanency plan was long-term substitute care;

(G) whether the child's achieved permanency plan was placement with an appropriate relative or another person, other than a foster parent, having standing; and

(H) whether the child was adopted by the child's foster parents.

(b) In addition to the information required in Subsection (a), the department shall compile information on:

(1) the number of families that used postadoption program services to assist in maintaining adoptive placements;

(2) the number of children returned to the department's custody after placement with an adoptive family but before a final adoption order was rendered;

(3) the number of children returned to the department's custody after the date a final order of adoption was rendered for the child;

(4) the number of adoptive families who used postadoption program services before the date a child placed with the family returned to the department's custody;

(5) the percentage of children who were placed in an appropriate setting based on the level of care determined for the child;

(6) the percentage of children placed in a department foster home;

(7) the percentage of children placed in a private child-placing agency;

(8) the number of children whose permanency plan was long-term substitute care;

(9) the number of children whose achieved permanency plan was placement with an appropriate relative or another person, other than a foster parent, having standing;

(10) the number of children adopted by the child's foster parents; and

(11) the number of children whose achieved permanency plan was removal of the disabilities of minority.

(c) The department shall make the information maintained under this section, other than information that is required by law to be confidential, available to the public by computer.

Sec. 264.112. REPORT ON CHILDREN IN SUBSTITUTE CARE. (a) The department shall report the status for children in substitute care to the Board of Protective and Regulatory Services at least once every 12 months.

(b) The report shall analyze the length of time each child has been in substitute care and the barriers to placing the child for adoption or returning the child to the child's parent or parents.

SECTION 19. Subchapter C, Chapter 264, Family Code, is amended by adding Sections 264.206 and 264.207 to read as follows:

Sec. 264.206. SEARCH FOR ADOPTIVE PARENTS. (a) The department shall begin its efforts to locate qualified persons to adopt a child, including persons registered with the adoptive parent registry under Subchapter B, at the time the department's permanency plan for the child becomes the termination of the parent-child relationship and adoption of the child.

(b) The department shall report to the court in which the department petitions for termination of the parent-child relationship on the child's adoptability and the department's search for prospective adoptive parents for the child, including information relating to the department's efforts to work with licensed child-placing agencies.

Sec. 264.207. DEPARTMENT PLANNING AND ACCOUNTABILITY. (a) The department shall adopt policies that provide for the improvement of the department's services for children and families, including policies that provide for conducting a home study within four months after the date an applicant is approved for an adoption and documenting the results of the home study within 30 days after the date the study is completed. The policies adopted under this section must:

(1) be designed to increase the accountability of the department to individuals who receive services and to the public; and

(2) assure consistency of services provided by the department in the different regions of the state.

(b) To accomplish the goals stated in Subsection (a), the department shall:

(1) establish time frames for the initial screening of families seeking to adopt children;

(2) provide for the evaluation of the effectiveness of the department's management-level employees in expeditiously making permanent placements for children;

(3) establish, as feasible, comprehensive assessment services in various locations in the state to determine the needs of children and families served by the department;

(4) emphasize and centralize the monitoring and promoting of the permanent placement of children receiving department services;

(5) establish goals and performance measures in the permanent placement of children;

(6) seek private licensed child-placing agencies to place a child in the department's managing conservatorship who has been available for permanent placement for more than 90 days;

(7) provide information to private licensed child-placing agencies concerning children under Subdivision (6);

(8) provide incentives for a private licensed child-placing agency that places a child, as defined by Section 162.301, under Subdivision (6);

(9) encourage foster parents to be approved by the department as both foster parents and adoptive parents;

(10) address failures by the department's service regions in making permanent placements for children in a reasonable time; and

(11) require the department's service regions to participate in the Texas Adoption Resources Exchange.

SECTION 20. Subsection (a), Section 264.603, Family Code, is amended to read as follows:

(a) The attorney general shall contract with one statewide organization of individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect and experience in operating volunteer advocate programs to provide training, technical assistance, and evaluation services for the benefit of local volunteer advocate programs. The contract shall require measurable goals and objectives for expanding local volunteer child advocate programs to areas of the state in which those programs do not exist.

SECTION 21. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.028 to read as follows:

Sec. 72.028. REPORT ON JUDICIAL EFFICIENCY IN CERTAIN FAMILY LAW CASES. (a) Not later than December 1 of each year, the office shall prepare and submit a report on judicial efficiency in cases brought by the Department of Protective and Regulatory Services under Title 5, Family Code, to the governor, the lieutenant governor, the speaker of the house of representatives, and the chief justice of the supreme court.

(b) The report must cover a one-year period beginning September 1 of the preceding year and must include the following information about cases brought by the Department of Protective and Regulatory Services under Title 5, Family Code:

(1) recommended docket management procedures and reporting requirements for the cases;

(2) an assessment of the need for mandated judicial review of the cases at three-month intervals after the termination of parental rights to monitor the adoption process;

(3) the extent to which continuances are granted in the cases;

(4) the promptness of hearings in the cases;

(5) a list of courts that give priority to the cases; and

(6) a list of all judges and associate judges in this state who preside over the cases.

(c) The Department of Protective and Regulatory Services shall provide all necessary information in the department's possession that is required by the office in the preparation of the report.

SECTION 22. Except as provided by Section 24 of this Act, this Act takes effect September 1, 1997.

SECTION 23. The Office of Court Administration of the Texas Judicial System shall submit the first report under Section 72.028, Government Code, as added by Section 21 of this Act, not later than December 1, 1999.

SECTION 24. (a) The change in law made by Sections 2-16 of this Act takes effect January 1, 1998.

(b) Except as provided by Subsection (c) of this section, Sections 2-16 of this Act apply to a pending suit affecting the parent-child relationship regardless of whether the suit was commenced before, on, or after the effective date of this Act.

(c) If the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before the effective date of this Act, the court shall establish a date for dismissal of the suit not later than the second anniversary of the date of the next hearing conducted under Chapter 263, Family Code, unless the court has rendered a final order before the dismissal date.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 34** as follows:

In Section 16, page 14, strikes lines 17-19.

Floor Amendment No. 2

Amend **CSSB 34** as follows:

(1) In SECTION 16 of the bill, in proposed Subchapter E, Chapter 263, Family Code (committee printing, page 15, between lines 15 and 16), insert the following:

Sec. 263.404. COURT INFORMATION SYSTEM. The Office of Court Administration of the Texas Judicial System shall consult with the courts presiding over cases brought by the department for the protection of children to develop an information system to track compliance with the requirements of this subchapter for the timely disposition of those cases.

(2) Strike SECTION 17 of the bill, amended Section 264.009, Family Code (committee printing, page 18, line 8, through page 19, line 9).

(3) Strike SECTION 21 of the bill, proposed Section 72.028, Government Code (committee printing, page 24, line 26, through page 25, line 27).

(4) In SECTION 22 of the bill (committee printing, page 26, line 1), strike "Except as provided by Section 24 of this Act," and substitute "Except as otherwise provided by this Act,".

(5) Strike SECTION 23 of the bill (committee printing, page 26, lines 3-6).

(6) In SECTION 24 of the bill, strike Subsection (c) (committee printing, page 26, lines 13-19), and substitute the following:

(c) If the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before January 1, 1998, the court shall at the first hearing conducted on or after that date under Chapter 263, Family Code, establish a date for dismissal of the suit not later than the second anniversary of the date of the hearing, unless the court has rendered a final order before the dismissal date.

(7) Renumber the sections of the bill as appropriate.

Floor Amendment No. 3

Amend **CSSB 34** as follows:

(1) Insert a new Section 1 to read as follows and renumber the sections of the bill accordingly:

SECTION 1. Subchapter C, Chapter 161, Family Code, is amended by adding Section 161.211 to read as follows:

Sec. 161.211. DIRECT OR COLLATERAL ATTACK ON TERMINATION ORDER. (a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under Section 161.002(b) is not subject to collateral or direct attack after the sixth month after the date the order was rendered.

(b) The validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was rendered.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

(2) In SECTION 1 of the bill, in amended Section 162.012(a), Family Code (committee printing, page 1, line 7), strike "The" and substitute "Notwithstanding Rule 329, Texas Rules of Civil Procedure, the [~~The~~]".

The amendments were read.

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 34** by a viva voce vote.

SENATE BILL 349 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 349** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 349** as follows:

(1) Add the following appropriately numbered section:

SECTION ___. Subchapter B, Chapter 107, Family Code, is amended by adding Section 107.017 to read as follows:

Sec. 107.017. IMMUNITY. (a) An attorney ad litem appointed under this subchapter is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of attorney ad litem.

(b) Subsection (a) does not apply to a recommendation or opinion that is:

(1) wilfully wrongful;

(2) given with conscious indifference or reckless disregard to the safety of another;

(3) given in bad faith or with malice; or

(4) grossly negligent.

(2) In SECTION 9 of the bill, in amended Section 264.607(a)(3)(A), Family Code (committee printing, page 8, line 21), between "information" and "to", insert "in writing".

(3) In SECTION 9 of the bill, in amended Section 264.607(a)(3)(A), Family Code (committee printing, page 8, line 22), between "court" and "regarding", insert "and to counsel for the parties involved".

(4) In SECTION 9 of the bill, in amended Section 264.607(a)(3)(D), Family Code (committee printing, page 9, line 3), between "reports" and "to", insert "in writing".

(5) Renumber the sections of the bill appropriately.

Floor Amendment No. 1 on Third Reading

Amend **SB 349** on third reading as follows:

(1) Amend the new SECTION added by Floor Amendment No. 1, which added a new Section 107.017 to Subchapter B, Chapter 107, Family Code, by striking new Section 107.017 in its entirety.

(2) Renumber the remaining sections appropriately.

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 349** by a viva voce vote.

SENATE BILL 52 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 52** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 52**, in SECTION 1 of the bill, subsection (a), and SECTION 2 of the bill, subsection (a) and (b) by adding the words "Notwithstanding Rule 329, Texas Rules of Civil Procedure, the" and striking the word "The" before the word "validity".

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 52** by a viva voce vote.

SENATE BILL 181 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 181** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 181** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 262.201, Family Code, is amended to read as follows:

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall:

(1) issue an appropriate temporary order under Chapter 105; and

(2) inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 2. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.006 to read as follows:

Sec. 263.006. WARNING TO PARENTS. At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the department as temporary managing conservator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 3. Section 263.201, Family Code, is amended to read as follows:

Sec. 263.201. STATUS HEARING; TIME. Not later than the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of a full adversary hearing under Chapter 262~~], the court shall hold a status hearing to review the child's status and the permanency plan developed for the child.

SECTION 4. The heading to Subchapter D, Chapter 263, Family Code, is amended to read as follows:

SUBCHAPTER D. PERMANENCY [~~REVIEW~~] HEARINGS

SECTION 5. Subsections (a) and (b), Section 263.301, Family Code, are amended to read as follows:

(a) Notice of a permanency [~~review~~] hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days' notice of a permanency hearing [~~to review a child's placement~~] and are entitled to present evidence and be heard at the hearing:

(1) the department;

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the child; [~~and~~]

(5) an attorney ad litem appointed for the child under Chapter 107;

(6) a volunteer advocate appointed for the child under Chapter 107; and

(7) any other person or agency named by the court to have an interest in the child's welfare.

SECTION 6. Section 263.302, Family Code, is amended to read as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The [~~court may dispense with the attendance of the~~] child shall attend each permanency hearing unless the court specifically excuses the child's attendance. Failure by the child to attend a hearing does not affect the validity of an order rendered at the [~~at a placement review~~] hearing.

SECTION 7. Subchapter D, Chapter 263, Family Code, is amended by adding Section 263.3025 to read as follows:

Sec. 263.3025. PERMANENCY PLAN. (a) The department shall prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. The department shall give a copy of the plan to each person entitled to notice under Section 263.301(b) not later than the 10th day before the date of the child's first permanency hearing.

(b) In addition to the requirements of the department rules governing permanency planning, the permanency plan must contain the information required to be included in a permanency progress report under Section 263.303.

(c) The department shall modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 8. Section 263.303, Family Code, is amended to read as follows:

Sec. 263.303. PERMANENCY PROGRESS [~~STATUS~~] REPORT. (a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency [~~review~~] hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency progress [~~status~~] report unless the court orders a different period for providing the report [~~or orders that a report is not required for a specific hearing~~].

(b) The permanency progress [~~status~~] report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate [~~all relevant information concerning each of the guidelines under this chapter and~~] the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; and

(F) [~~(2) recommend one of the following actions:~~

[~~(A) that the child be returned to the child's home and that the suit be dismissed;~~

[~~(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;~~

[~~(C) that the child remain in substitute care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;~~

[~~(D) that the child remain in substitute care for a specified period and that termination of parental rights be sought under this code;~~

[~~(E) that a child who has resided in substitute care for at least 18 months be placed or remain in permanent or long-term substitute care because of the child's special needs or circumstances; or~~

[~~(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and~~

[~~(3)~~] with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under Subsection (b). A response must be filed not later than the third day before the date of the hearing.

SECTION 9. Section 263.304, Family Code, is amended to read as follows:

Sec. 263.304. INITIAL PERMANENCY [~~REVIEW~~] HEARING; TIME. Not later than the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of the conclusion of the full adversary hearing under Chapter 262~~], the court shall hold a permanency hearing to review the status of, and permanency plan for, the [a] child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter [~~in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan~~].

SECTION 10. Section 263.305, Family Code, is amended to read as follows:

Sec. 263.305. SUBSEQUENT PERMANENCY [~~REVIEW~~] HEARINGS. A subsequent permanency hearing before entry of a final order [~~Subsequent review hearings~~] shall be held [~~not earlier than 5 1/2 months and~~] not later than the 120th day [~~seven months~~] after the date of the last permanency hearing in the suit. For [~~unless, for~~] good cause shown or on the court's own motion, the court may order more frequent hearings [~~by a party, an earlier hearing is approved by the court~~].

SECTION 11. Section 263.306, Family Code, is amended to read as follows:

Sec. 263.306. PERMANENCY [~~REVIEW~~] HEARINGS: PROCEDURE. At each permanency [~~review~~] hearing the court shall [~~determine~~]:

(1) identify [~~the identity of~~] all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent;

(3) return the child to the parent or parents if [~~whether~~] the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(4) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(5) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(6) evaluate the parties' compliance with temporary orders and [~~(3) the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in~~] the service plan;

(7) determine [~~(4)~~] whether:

(A) the child continues to need substitute care;

(B) [~~and whether~~] the child's current placement is appropriate for meeting the child's needs; and

(C) other plans or services are needed to meet the child's special needs or circumstances;

(8) if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(9) if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;

(10) determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter; and

(11) determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

[~~(5) a date for achieving the child's permanency plan;~~

[~~(6) if the child has been in substitute care for not less than 18 months, the future status of the child and the appropriateness of the date by which the child may return home and whether to render further appropriate orders;~~

[~~(7) if the child is in substitute care outside the state, whether the out-of-state placement continues to be appropriate and in the best interest of the child;~~

[~~(8) whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;~~

[~~(9) whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;~~

[~~(10) whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;~~

[~~(11) whether a long-term substitute care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term substitute care placement and if the child is placed in~~

~~institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;~~

~~[(12) whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;~~

~~[(13) whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;~~

~~[(14) whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and~~

~~[(15) whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.~~]

SECTION 12. Chapter 263, Family Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. FINAL ORDER FOR CHILD UNDER DEPARTMENT CARE

Sec. 263.401. DISMISSAL AFTER ONE YEAR; EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension order must also:

(1) schedule the new date for dismissal of the suit; and

(2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.

(c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.

(d) For purposes of this section, a final order is an order that:

(1) requires that a child be returned to the child's parent;

(2) names a relative of the child or another person as the child's managing conservator;

(3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or

(4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Sec. 263.402. RETURN OF CHILD TO PARENT OR PLACEMENT WITH RELATIVE. (a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to return the child to the child's parent or to place the child with a relative of the child;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit.

(c) If a child placed with a parent or relative under this section must be moved from that home by the department before the dismissal of the suit or the rendering of a final order, the court shall, at the time of the move, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved under this subsection, whichever date is later.

(d) If the court renders an order under *this section*, the court *must* include in the order specific findings regarding the grounds for the order.

Sec. 263.403. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR WITHOUT TERMINATING PARENTAL RIGHTS. (a) The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

[Sections 263.404-263.500 reserved for expansion]

SUBCHAPTER F. PLACEMENT REVIEW HEARINGS

Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a placement review hearing at least once every six months until the child becomes an adult.

(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult.

(c) Notice of a placement review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing.

(d) The following are entitled to not less than 10 days' notice of a placement review hearing:

(1) the department;

(2) the foster parent or director of the group home or institution in which the child is residing;

(3) each parent of the child;

(4) each possessory conservator or guardian of the child;

(5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and

(6) any other person or agency named by the court as having an interest in the child's welfare.

(e) The court may dispense with the requirement that the child attend a placement review hearing.

Sec. 263.502. PLACEMENT REVIEW REPORT. (a) Not later than the 10th day before the date set for a placement review hearing, the department or other authorized agency shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(b) For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.

(c) The placement review report must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) identify the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living if the services are available in the community;

(4) identify other plans or services that are needed to meet the child's special needs or circumstances; and

(5) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At each placement review hearing, the court shall determine whether:

(1) the child's current placement is appropriate for meeting the child's needs;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

SECTION 13. Sections 263.308 and 263.309, Family Code, are repealed.

SECTION 14. (a) The change in law made by this Act takes effect January 1, 1998.

(b) Except as provided by Subsection (c) of this section, this Act applies to a pending suit affecting the parent-child relationship regardless of whether the suit was commenced before, on, or after the effective date of this Act.

(c) If the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before January 1, 1998, the court shall at the first hearing conducted on or after that date under Chapter 263, Family Code, establish a date for dismissal of the suit not later than the second anniversary of the date of the hearing, unless the court has rendered a final order before the dismissal date.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 181** by a viva voce vote.

SENATE BILL 258 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 258** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 258,** in SECTION 1 of the bill, by striking proposed Section 2(b)(1), Article 21.53F, Insurance Code (Committee printing page 2, line 25 through page 3, line 6) and substituting the following:

(1) a plan that provides coverage:

(A) only for a specified disease or other limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to liability insurance; or

(E) only for indemnity for hospital confinement;

Floor Amendment No. 2

Amend **SB 258** as follows:

On page 2, between lines 23 and 24, add a new subsection "(4)" which incorporates this language, "Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.", and renumber the subsequent lines accordingly.

The amendments were read.

Senator Ellis moved to concur in the House amendments to **SB 258**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 211 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 211** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 211** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and operation of the Texas child care fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 308 to read as follows:

CHAPTER 308. TEXAS CHILD CARE FUND

Sec. 308.001. DEFINITION. In this chapter, "fund" means the Texas child care fund.

Sec. 308.002. TEXAS CHILD CARE FUND. (a) The Texas child care fund is an account in the general revenue fund consisting of state appropriations and money donated to the state by local governments, businesses, nonprofit organizations, or other persons for child care services.

(b) Money in the fund shall be used to provide child care services in a manner that maximizes the state's entitlement to receive federal matching money.

Sec. 308.003. ADMINISTRATION AND PROMOTION OF FUND. (a) The commission, with assistance from the advisory board appointed under Section 308.004, shall:

(1) administer the fund;

(2) solicit donations to the fund from all appropriate sources, including local governments, businesses, and nonprofit organizations;

(3) distribute money in the fund to provide child care services; and

(4) aggressively promote public awareness of the fund and the need for donations to provide adequate child care services in this state.

(b) To encourage local child care planning and local participation in meeting matching requirements for state entitlement to federal child care funding, the commission shall use donated purchase agreements when appropriate.

(c) The commission shall ensure that a local government that donates money to the fund receives child care services in the geographical area served by the local government of a value at least equal to the amount of money donated by the local government.

(d) The commission may adopt rules necessary for the administration and promotion of the fund.

Sec. 308.004. ADVISORY BOARD. (a) The commission shall appoint a permanent advisory board to assist and monitor the commission in administering and promoting the fund. The advisory board shall include:

(1) representatives from:

(A) the commission;

(B) the office of the comptroller;

(C) the Texas Department of Human Services;

(D) the Department of Protective and Regulatory Services;

(E) businesses and business organizations; and

(F) nonprofit organizations; and

(2) at least one consumer of child care services.

(b) The advisory board shall periodically evaluate the operation of the fund and make recommendations to the commission on the administration and promotion of the fund.

(c) A member of the advisory board serves at the will of the commission.

(d) The advisory board is subject to Article 6252-33, Revised Statutes, other than Section 8 of that article.

(e) The advisory board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory board is abolished and this section expires September 1, 2003.

SECTION 2. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.067 to read as follows:

Sec. 301.067. CHILD CARE MARKET SURVEY; COMPENSATION RATE. (a) The commission shall ensure that a biennial survey is conducted to determine the local market rates of child care services provided throughout the state.

(b) Unless prohibited by federal law or regulations, a provider of child care services that is reimbursed under a program administered by the commission shall be reimbursed at a rate that is the lesser of the provider's published rate to the general public or the 75th percentile of the local market rate in the provider's geographic area.

SECTION 3. Section 301.067(b), Labor Code, as added by this Act, does not apply to child care services provided under a contract entered into by a child care provider before the effective date of this Act.

SECTION 4. The Texas Workforce Commission shall appoint the advisory board required by Section 308.004, Labor Code, as added by this Act, not later than October 1, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 211** as follows:

(1) In SECTION 2 of the bill, in proposed Section 301.067, Labor Code (House committee report, page 3, between lines 18 and 19), insert the following:

(b) Local market rates in a geographic area in which a substantial number of child care service providers charge a rate that is less than the actual cost of providing service in that area may be adjusted to reflect the actual cost of providing service.

(2) In SECTION 2 of the bill, in proposed Section 301.067(b), Labor Code (House committee report, page 3, line 19), strike "(b)" and substitute "(c)".

(3) In SECTION 2 of the bill, in proposed Section 301.067(b), Labor Code (House committee report, page 3, line 23), between "rate" and "in", insert ", as adjusted under Subsection (b) if appropriate,".

(4) In SECTION 3 of the bill (House committee report, page 3, line 25), strike "Section 301.067(b)" and substitute "Section 301.067(c)".

Floor Amendment No. 2

Amend **CSSB 211** by adding the following appropriately numbered section to the bill and renumbering subsequent sections of the bill accordingly:

SECTION ___. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.068 to read as follows:

Sec. 301.068. CHILD CARE ADMINISTRATION. (a) The commission, or a local workforce development board that accepts child care funds from the commission, shall contract with government organizations, public nonprofit agencies, or community-based organizations, as defined by 20 U.S.C. Section 1201a and its subsequent amendments, to administer the subsidized child care program through the existing uniform statewide brokered system.

(b) An entity with whom the commission or a board contracts must demonstrate:

(1) a variety of social service experiences with the local client population; and

(2) experience in a federal and state funded system of child-care vendor management in this state, child development, support services, and financial management.

(c) Not later than November 15, 1998, the commission shall submit a comprehensive report on local child care administration to the governor, lieutenant governor, and the speaker of the house of representatives. The report shall include information on:

(1) the performance of each child care administration contractor;

(2) the success in each local workforce development area of integrating child care services into the workforce development system; and

(3) the readiness of each local workforce development board to procure contracts for child care administration.

(d) This section expires September 1, 1999.

Floor Amendment No. 3

Amend **CSSB 211** by adding the following appropriately numbered sections and renumbering the existing sections of the bill accordingly:

SECTION _____. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.026 to read as follows:

Sec. 403.026. CHILD-CARE GUIDE; INTERAGENCY WORK GROUP.

(a) The comptroller shall develop and periodically update a statewide guide for child care designed to assist child-care consumers in making informed choices regarding available child-care services and to provide useful information regarding the child-care industry to child-care service providers. The guide must:

(1) contain comprehensive and current information on:

(A) child care services, including consumer information on staff-child ratios, group sizes, level of training of staff and management, hours of availability, price information, and other relevant consumer information;

(B) early childhood development and factors to consider in making informed child-care choices;

(C) child care for children with disabilities;

(D) training opportunities in the child-care profession;

(E) child-care financing options;

(F) technical assistance for child-care service providers; and

(G) other relevant topics that will assist a child-care consumer in making informed child-care choices as determined by the comptroller and the interagency work group created under Subsection (b); and

(2) enable a child-care consumer to identify and assess each option available for meeting a child-care consumer's individual needs.

(b) An interagency work group is created to assist the comptroller in developing and updating the guide. The work group is composed of representatives of:

(1) the comptroller's office, appointed by the comptroller;

(2) the Texas Workforce Commission, appointed by the executive director of that agency;

(3) the Texas Department of Human Services, appointed by the commissioner of human services;

(4) the Department of Protective and Regulatory Services, appointed by the executive director of that agency;

(5) businesses and business organizations, appointed by the comptroller;

(6) resource and referral agencies, appointed by the comptroller;

(7) nonprofit organizations, appointed by the comptroller;

(8) child-care consumers, appointed by the comptroller;

(9) child-care providers, appointed by the comptroller; and

(10) agencies or organizations that contract with the Texas Workforce Commission or a local workforce development board for the management of child care services, appointed by the Texas Workforce Commission.

(c) A member of the work group serves at the will of the appointing agency.

(d) The comptroller shall appoint a member of the work group to serve as presiding officer, and members of the work group shall elect any other necessary officers.

(e) The work group shall meet at the call of the presiding officer.

(f) The appointing entity is responsible for the expenses of a member's service on the work group. A member of the work group receives no additional compensation for serving on the work group.

(g) The work group is not subject to Article 6252-33, Revised Statutes.

(h) The entities listed in Subsection (b) shall take all action necessary to assist the comptroller in developing and updating the guide, including providing staff with expertise in information and referral services and other necessary resources, but may not diminish services required to be provided by other law.

(i) The comptroller shall make the guide available to the public in electronic format and through the Internet.

SECTION ____. Not later than January 1, 1998, the comptroller of public accounts shall complete development of the child-care guide required by Section 403.026, Government Code, as added by this Act, and make the guide available in the manner required by that section.

The amendments were read.

Senator Ellis moved to concur in the House amendments to **SB 211**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 266 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 266** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 266** as follows:

(1) In SECTION 1 of the bill, in proposed Section 481.407, Government

Code (page 7, between lines 14 and 15, Senate engrossed version), insert the following:

"(e) When enrolling a loan in the program, a participating financial institution may specify an amount to be covered under the program that is less than the total amount of the loan."

(2) In SECTION 1 of the bill, after the last sentence of proposed Section 481.408(b), Government Code (page 8, line 5, Senate engrossed version), insert: "The institution may recover from the borrower all or part of the amount the institution is required to pay under this subsection in any manner agreed to by the institution and borrower."

Amendment No. 1 on Third Reading

Amend **SB 266** on third reading as follows:

(1) On page 2, line 22, strike "special" and substitute "dedicated"; and

(2) On page 2, line 22, strike "state treasury" and substitute "general revenue fund".

The amendments were read.

On motion of Senator Ellis, the Senate concurred in the House amendments to **SB 266** by a viva voce vote.

HOUSE BILL 2909 ON THIRD READING

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

HB 2909, Relating to persons eligible for a license to carry a concealed handgun, to the rights and duties of license holders, and to certain offenses involving weapons.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Ellis, Gallegos, Luna, Shapleigh, Truan, and West asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 1856 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1856** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 1856** by striking SECTIONS 19 and 20 of the bill and substituting:

SECTION 19. The changes in law made by this Act apply only to an offense committed or a violation of a statute or agency rule that occurs on or after the effective date of this Act. For purposes of this section, an offense occurs, or a violation of a statute or agency rule occurs, before the effective

date of this Act if any element of the offense or violation occurs before that date, and the former law is continued in effect for that purpose.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 2

Amend **SB 1856** as follows:

(1) Between existing SECTIONS 1 and 2 (House Committee Report, page 2, between lines 1 and 2), insert the following appropriately numbered section:

SECTION ___. Section 382.0622(a), Health and Safety Code, is amended to read as follows:

(a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, and 382.037 and as otherwise provided by law; [~~and~~]

(2) $2 of each advance payment collected by the Department of Public Safety for inspection certificates for vehicles other than mopeds under Section 548.501(b), Transportation Code; and

(3) fees imposed under Section 548.501(c), Transportation Code [~~141(c), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)~~].

(2) Between existing SECTIONS 11 and 12 of the bill (House Committee Report, page 19, between lines 10 and 11), insert the following appropriately numbered section:

SECTION ___. Section 548.501, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c) and Sections 548.503 and 548.504, the fee for inspection of a motor vehicle other than a moped is $10.50. The fee for inspection of a moped is $5.75. The fee for a verification form issued as required by Section 548.256 is $1.

(c) An additional emissions fee of $2 shall be added to the fee provided by Subsection (a) for the inspection of a motor vehicle other than a moped in a county in a non attainment area. Each amount listed in Subsection (b) is increased by $2 for inspections and inspection certificates in a county in a nonattainment area. The additional fee is payable to the department at the times and in the manner fees under Subsection (b) are paid. The fee provided by this subsection may not be collected for an inspection that occurs after August 31, 2001.

(3) Between existing SECTIONS 16 and 17 of the bill (House Committee Report, page 26, between lines 13 and 14), insert the following appropriately numbered section:

SECTION ___. (a) Notwithstanding Section 26.3573, Water Code, and Sections 361.133 and 382.0622, Health and Safety Code, amounts in the

petroleum storage tank remediation fund, the hazardous and solid waste remediation fee fund, or the clean air account may be appropriated for the purpose of paying settlements of claims or judgments against the state in connection with contracts for the vehicle emissions inspection program.

(b) The authority provided by this section expires September 1, 2001.

(4) In existing SECTION 19 of the bill, strike Subsection (c) (House Committee Report, page 27, line 24) and substitute the following:

(c) This section and the section authorizing payment of settlements of claims and judgments against the state from certain funds and accounts take effect immediately.

(5) Renumber sections of the bill accordingly and change cross-references in SECTION 19(a) of the bill as appropriate.

Amendment No. 3

Amend Floor Amendment No. 2 (by Chisum) to **SB 1856** as follows:

(1) On page 2, line 5, of the amendment, strike "$2" and substitution "$1".

(2) On page 2, line 7, of the amendment, strike "in a county in a nonattainment area".

(3) On page 2, line 8, of the amendment, strike "$2" and substitute "$1".

(4) On page 2, lines 9 and 10, of the amendment, strike "in a county in a nonattainment area".

(5) On page 2 of the amendment, strike lines 12 and 13 and substitute the following:

are paid. The fee provided by this subsection may not be collected for an inspection that occurs after the date the comptroller certifies that the debt is satisfied.

Floor Amendment No. 4

Amend **SB 1856** as follows:

(1) In Section 2 of the bill, proposed Subsection (a), Section 502.009, Transportation Code, at the end of the second sentence of the subsection, between "required" and the period (house committee report, page 2, line 16), insert "and the United States Environmental Protection Agency does not impose requirements upon this state that are more stringent than the requirements imposed upon any other state".

(2) In Section 2 of the bill, proposed Subsection (a), Section 502.009, Transportation Code, at the end of the last sentence of the subsection, between "plan" and the period (house committee report, page 2, line 23), insert "or that such enforcement is not required for the state implementation plan of any other state, and this state is willing to meet any additional requirement(s) imposed upon any other state in lieu of registration based enforcement".

Floor Amendment No. 5

Amend **SB 1856** as follows:

In Section 2 of the bill, proposed Subsection (d), Section 502.009, Transportation Code, between "(d)" and "department" (house committee

report, page 3, line 8), strike "The" and substitute "In consultation with a representative of the Texas Tax Assessor/Collector Association, the".

Floor Amendment No. 7

Amend **SB 1856** as follows:

(1) In Section 15 of the bill (house committee report, page 23, line 6), between "displays" and "an" insert "Or causes or permits to be displayed".

(2) In Section 15 of the bill (house committee report, page 23, line 9), between the comma and "or" insert "issued for a vehicle failing to meet all emission inspection requirements,".

Floor Amendment No. 8

Amend **SB 1856** (house committee report) as follows:

(1) In Section 9 of the bill, proposed Subdivision (1), Subsection (b), Section 548.306, Transportation Code, at the end of that subdivision (page 9, line 8), strike "or".

(2) In Section 9 of the bill, proposed Subdivision (2), Subsection (b), Section 548.306, Transportation Code, at the end of that subdivision (page 9, line 13), strike "rule." and substitute:

; or

(3) visible smoke that remains suspended in the air 10 or more seconds before fully dissipating.

(3) In Section 9 of the bill, proposed Subsection (c), Section 548.306, Transportation Code, at the end of the third sentence of the subsection (page 9, line 23), strike "inspection." and substitute:

inspection and explaining any extension or assistance that may be available to the owner for making any necessary repair.

(4) In Section 9 of the bill, immediately following proposed Subsection (c), Section 548.306, Transportation Code, (page 9, line 25), insert Subsections (d) and (e) of that section, to read as follows and reletter the remaining subsections appropriately:

(d) The department shall provide notice under Subsection (c) to the registered owner of a vehicle in violation of Subsection (b)(3) as soon as is practicable after the department receives notice that a peace officer in this state has issued the driver of the vehicle an informative citation for the violation. The department shall adopt rules governing the procedures for a peace officer of police department to provide notice of informative citations issued for violations of Subsection (b)(3). The rules must include a requirement that, for each citation issued, the peace officer or police department inform the department of the date and location of the violation.

(e) A peace officer who has probable cause to believe an offense under Subsection(b)(3) has been committed may issue the driver of the vehicle an informative citation that indicates that an offense under Subsection (b)(3) may have been committed and that explains that the registered owner of the vehicle may receive in the mail a notice under Subsection (c).

Floor Amendment No. 9

Amend **SB 1856** (house committee report) by adding the following appropriately numbered section and renumbering the sections of the bill appropriately:

SECTION ___. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0372-382.0375 to read as follows:

Sec. 382.0372. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

(1) required to be registered in and is primarily operated in Dallas, Tarrant, El Paso, or Harris County; and

(2) at least two and less than 25 years old.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

(1) a vehicle with Unites States governmental plates primarily operated in Dallas, Tarrant, El Paso, or Harris County;

(2) a vehicle operated on a federal facility in Dallas, Tarrant, El Paso, or Harris County; and

(3) a vehicle primarily operated in Dallas, Tarrant, El Paso, or Harris County that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt" license plate.

(c) The Department of Public Safety of the State of Texas may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who:

(A) cannot afford to comply with the program, based on reasonable income standards; or

(B) has spent a reasonable amount of money, set by the commission, to repair the vehicle, without bringing the vehicle into compliance with emissions standards; and

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs.

(d) The program does not apply to a:

(1) motorcycle;

(2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or

(3) circus vehicle.

Sec. 382.0373. REMOTE SENSING PROGRAM COMPONENT. (a) The commission and the Department of Public Safety of the State of Texas jointly shall develop a program component for enforcing emissions standards by use of remote or automatic emissions detection and analysis equipment.

(b) The program component may be employed in any county designated as a nonattainment area within the meaning of Section 107(d) of the Clean Air Act (42 U.S.C. Section 7407).

Sec. 382.0374.INSPECTION EQUIPMENT AND PROCEDURES. (a) The commission by rule may adopte:

(1) standards and specifications for motor vehicle emissions testing equipment;

(2) recordkeeping and reporting procedures; and

(3) measurable emissions standards a vehicle must meet to pass the inspection.

(b) The Department of Public Safety of the State of Texas by rule shall adopt:

(1) testing procedures in accordance with motor vehicle emissions testing equipment specifications; and

(2) procedures for issuing or denying an emissions inspection certificate.

Sec. 382.0375. COLLECTION OF DATA; REPORT. (a) The commission and the Department of Public Safety of the State of Texas may collect inspection and maintenance information derived from the emissions inspection and maintenance program, including;

(1) inspection results;

(2) inspection station information;

(3) information regarding vehicles operated on federal facilities;

(4) vehicle registration information; and

(5) other data the United States Environmental Protection Agency requires.

(b) The commission shall:

(1) report the information to the United States Environmental Protection Agency; and

(2) compare the information on inspection results with registration information for enforcement purposes.

Floor Amendment No. 1 on Third Reading

Amend **SB 1856** on third reading by striking the sections of the bill, as added by Floor Amendment No. 2 and amended by Floor Amendment No. 3, on 2nd reading amending Section 382.0622, Health and Safety Code, and Section 548.501, Transportation Code.

The amendments were read.

Senator Wentworth moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 1856** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Brown, Lucio, Lindsay, and Barrientos.

SENATE JOINT RESOLUTION 43 WITH HOUSE AMENDMENTS

Senator Cain called **SJR 43** from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Amendment

Amend **SJR 43** by substituting in lieu thereof the following:

A JOINT RESOLUTION

proposing a constitutional amendment authorizing the legislature to limit increases in value and the frequency of appraisals of residence homesteads for property tax purposes and to provide for the transfer to a different residence homestead of the school property tax freeze on residence homesteads of the elderly.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Article VIII, Texas Constitution, is amended by adding Subsections (i) and (j) to read as follows:

(i) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the maximum annual increase in the appraised value of residence homesteads for ad valorem tax purposes in order to provide tax relief from the effects of increases in the market value of residence homesteads. A limitation on appraisal increases authorized by this subsection:

(1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article; and

(2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect, the owner's spouse or surviving spouse, nor a minor child of the owner qualifies for an exemption under Section 1-b.

(j) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the frequency with which increases in the appraised value of real property for ad valorem tax purposes may be recognized.

SECTION 2. Section 1-b(d), Article VIII, Texas Constitution, is amended to read as follows:

(d) Except as otherwise provided by this subsection, if a person receives the residence homestead exemption prescribed by Subsection (c) of this section for homesteads of persons sixty-five (65) years of age or older, the total amount of ad valorem taxes imposed on that homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person or that person's spouse who receives the exemption. If a person sixty-five (65) years of age or older dies in a year in which the person received the exemption, the total amount of ad valorem taxes imposed on the homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person's surviving spouse if the spouse is fifty-five (55) years of age or older at the time of the person's death, subject to any exceptions provided by general law. The legislature, by general law, may provide for the transfer of all or a proportionate amount of a limitation provided by this subsection for a person who qualifies for the limitation and

establishes a different residence homestead. However, taxes otherwise limited by this subsection may be increased to the extent the value of the homestead is increased by improvements other than repairs or improvements made to comply with governmental requirements and except as may be consistent with the transfer of a limitation under this subsection.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997, but only if the constitutional amendment proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997, is not approved by the voters. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the legislature to limit increases in value and the frequency of appraisals of residence homesteads for property tax purposes and to provide for the transfer to a different residence homestead of the school property tax freeze on residence homesteads of the elderly."

Floor Amendment No. 1

Amend **CSSJR 43** as follows:

(1) On page 2, strike lines 4 and 5 and substitute the following:

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(2) On page 3, between lines 1 and 2, insert the following:

(g) For purposes of the limitation on tax increases on a subsequently qualified residence homestead provided by Subsection (d) of this section, the legislature by general law may authorize the governing body of a school district to elect to apply the limitation provided by Subsection (d) to the residence homestead of an individual as if that limitation were in effect on a date before January 1, 1998, as prescribed by the legislature. The legislature may specify the date by which the governing body must make the election. The election applies only to taxes imposed in a tax year that begins after the tax year in which the election is made.

The amendments were read.

Senator Cain moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SJR 43** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Cain, Chair; Harris, Armbrister, Bivins, and Ratliff.

SENATE BILL 841 WITH HOUSE AMENDMENTS

Senator Cain called **SB 841** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 841** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to ad valorem taxation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.12, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this section, the appraisal ratio of a homestead to which Section 23.21 or 23.22 applies is the ratio of the property's market value as determined by the appraisal district or appraisal review board, as applicable, to the market value of the property according to law. The appraisal ratio is not calculated according to the appraised value of the property as limited by Section 23.21.

SECTION 2. Section 6.03, Tax Code, is amended by amending Subsections (a), (b), (c), and (l) to read as follows:

(a) The appraisal district is governed by a board of six [~~five~~] directors. Five directors are appointed by the taxing units that participate in the district as provided by this section. The county assessor-collector is an ex officio director. To be eligible to serve on the board of directors, an individual other than the county assessor-collector must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office. An [~~To be eligible to serve on the board of an appraisal district established for a county having a population of at least 200,000 bordering a county having a population of at least 2,000,000 and the Gulf of Mexico, an individual must be a member of the governing body or an elected officer of a taxing unit entitled to vote on the appointment of board members under this section. However, an~~] employee of a taxing unit that participates in the district is not eligible to serve on the board unless the individual is also a member of the governing body or an elected official of a taxing unit that participates in the district.

(b) Members of the board of directors other than the county assessor-collector serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors other than the county assessor-collector are appointed by vote of the governing bodies of the incorporated cities and towns, the school districts, and, if entitled to vote, the conservation and reclamation districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships. Conservation and reclamation districts are not entitled to vote unless at least one conservation and reclamation district in the district delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year. On receipt of a request, the chief appraiser shall certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the district.

(l) If a vacancy occurs on the board of directors other than a vacancy in the position held by the county assessor-collector, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the chief appraiser within 10 days after notification from the board of directors of the existence of the vacancy, and the chief appraiser shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

SECTION 3. Section 6.034(a), Tax Code, is amended to read as follows:

(a) The taxing units participating in an appraisal district may provide that the terms of the appointed members of the board of directors be staggered if the governing bodies of at least three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the staggered terms. A change to staggered terms may be adopted only if the method or procedure for appointing board members is changed under Section 6.031 of this code to eliminate or have the effect of eliminating cumulative voting for board members as provided by Section 6.03 of this code. A change to staggered terms may be proposed concurrently with a change that eliminates or has the effect of eliminating cumulative voting.

SECTION 4. Section 6.04(a), Tax Code, is amended to read as follows:

(a) A majority of the appraisal district board of directors constitutes a quorum. The county assessor-collector is the chairman of the board. At its first meeting each calendar year, the board shall elect from its members a [~~chairman and a~~] secretary.

SECTION 5. Section 6.41(c), Tax Code, is amended to read as follows:

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years. A member of the appraisal district board of directors or an officer or employee of the comptroller, the appraisal office, or a taxing unit is ineligible to serve on the board. In an appraisal district established for a county having a population of more than 300,000, an individual who has served for all or part of three previous terms as a board member or auxiliary board member on the appraisal review board or is a former officer or employee of a taxing unit is ineligible to serve on the appraisal review board. In an appraisal district established for any other county, an individual who has served for all or part of three consecutive terms as a board member or auxiliary board member on the appraisal review board is ineligible to serve on the appraisal review board during a term that begins on the next January 1 following the third of those consecutive terms.

SECTION 6. Section 6.411, Tax Code, is amended to read as follows:

Sec. 6.411. AUXILIARY [~~BOARD~~] MEMBERS IN CERTAIN COUNTIES. (a) The board of directors of an appraisal district may appoint auxiliary members to [~~the appraisal review board to~~] hear taxpayer protests before the appraisal review board and to assist the board in performing its other duties.

(b) The number of auxiliary members that may be appointed is:

(1) for a county with a population of 1,000,000 or more, not more than 66 [~~30~~] auxiliary members;

(2) for a county with a population of at least 500,000 but less than 1,000,000, not more than 45 [~~20~~] auxiliary members;

(3) for a county with a population of at least 250,000 but less than 500,000, not more than 25 [~~10~~] auxiliary members; and

(4) for a county with a population of less than 250,000, not more than 10 [6] auxiliary members.

(c) Sections 6.41(c), (d), and (e) and Sections 6.412 and 6.413 apply to auxiliary [~~board~~] members [~~appointed under this section~~].

(d) An auxiliary member [~~of the appraisal review board appointed under this section~~] may not vote in a determination made by the board, may not serve as chairman or secretary of the board, and is not included in determining what constitutes a quorum of the board or whether a quorum is present at any meeting of the board.

(e) An auxiliary member [~~of the appraisal review board appointed under this section~~] is entitled to make a recommendation to the board in a protest heard by the member but is not entitled to vote on the determination of the protest by the board.

(f) An auxiliary member [~~of the appraisal review board appointed under this section~~] is entitled to the per diem set by the appraisal district budget for each day on which the member actively engages in performing the member's duties under Subsection (a) or (e) and is entitled to actual and necessary expenses incurred in performing those duties in the same manner as [~~other~~] members of the appraisal review board.

SECTION 7. Sections 11.13 (h) and (q), Tax Code, are amended to read as follows:

(h) Joint or community owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either. A person may not receive an exemption under this section for more than one residence homestead in the same year.

(q) The surviving spouse of an individual who qualifies for [~~received~~] an exemption under Subsection (d) for the residence homestead of a person 65 or older is entitled to an exemption for the same property from the same taxing unit in an amount equal to that of the exemption for which [~~received by~~] the deceased spouse qualified if:

(1) the deceased spouse died in a year in which the deceased spouse qualified for [~~received~~] the exemption;

(2) the surviving spouse was 55 or older when the deceased spouse died; and

(3) the property was the residence homestead of the surviving spouse when the deceased spouse died and remains the residence homestead of the surviving spouse.

SECTION 8. Section 11.18(f), Tax Code, is amended to read as follows:

(f) A charitable organization must:

(1) use its assets in performing the organization's charitable functions or the charitable functions of another charitable organization; and

(2) [;] by charter, bylaw, or other regulation adopted by the organization to govern its affairs[:

~~[(1) pledge its assets for use in performing the organization's charitable functions; and~~

[~~(2)~~] direct that on discontinuance of the organization by dissolution or otherwise:

(A) the assets are to be transferred to this state, the United States, or [~~to~~] an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended; or

(B) if required for the organization to qualify as a tax-exempt organization under Section 501(c)(12), Internal Revenue Code of 1986, as amended, the assets are to be transferred directly to the organization's members, each of whom, by application for an acceptance of membership in the organization, has agreed to immediately transfer those assets to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended, as designated in the bylaws, charter, or regulation adopted by the organization.

SECTION 9. Section 11.19(d), Tax Code, is amended to read as follows:

(d) To qualify as a youth development association for the purposes of this section, an association must:

(1) be organized and operated [~~engage~~] primarily for the purpose of [~~in~~] promoting the threefold spiritual, mental, and physical development of boys, girls, young men, or young women;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) operate in conjunction with a state or national organization that is organized and operated for the same purpose as the association; [~~and~~]

(4) use its assets in performing the association's youth development functions or the youth development functions of another youth development association; and

(5) by charter, bylaw, or other regulation adopted by the association to govern its affairs[:

~~[(A) pledge its assets for use in performing the association's youth development functions; and~~

[~~(B)~~] direct that on discontinuance of the association by dissolution or otherwise the assets are to be transferred to this state, the United States, or [~~to~~] a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

SECTION 10. Section 11.20(c), Tax Code, is amended to read as follows:

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; [~~and~~]

(3) use its assets in performing the organization's religious functions or the religious functions of another religious organization; and

(4) by charter, bylaw, or other regulation adopted by the organization to govern its affairs[~~:~~

[~~(A) pledge its assets for use in performing the organization's religious functions; and~~

[~~(B)~~]] direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state, the United States, or [~~to~~] a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

SECTION 11. Section 11.21(d), Tax Code, is amended to read as follows:

(d) To qualify as a school for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in educational functions;

(2) normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance at the place where its educational functions are carried on;

(3) [~~(2)~~] be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization is a corporation, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act; [~~and~~]

(4) use its assets in performing the organization's educational functions or the educational functions of another educational organization; and

(5) [~~(3)~~] by charter, bylaw, or other regulation adopted by the organization to govern its affairs[~~:~~

[~~(A) pledge its assets for use in performing the organization's educational functions; and~~

[~~(B)~~]] direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state, the

United States, or [~~to~~] an educational, charitable, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

SECTION 12. Section 11.26, Tax Code, is amended by amending Subsection (b) and adding Subsections (g), (h), (i), (j), and (k) to read as follows:

(b) If an individual makes improvements to the individual's [~~his~~] residence homestead, other than improvements required to comply with governmental requirements or repairs, the school district may increase the tax on the homestead in the first year the market value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. The amount of the tax increase is determined by applying the current tax rate to the difference in the assessed value of the homestead with the improvements and the assessed value it would have had without the improvements. The limitations imposed by Subsection (a), (g), or (i), as applicable, [~~of this section~~] then apply to the increased amount of tax until more improvements, if any, are made.

(g) Except as provided by Subsection (b), if an individual who receives a limitation on tax increases imposed by this section subsequently qualifies a different residence homestead for an exemption under Section 11.13, a school district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes the school district would have imposed on the subsequently qualified homestead in the first year in which the individual receives that exemption for the subsequently qualified homestead had the limitation on tax increases imposed by this section not been in effect, multiplied by a fraction the numerator of which is the total amount of school district taxes imposed on the former homestead in the last year in which the individual received that exemption for the former homestead and the denominator of which is the total amount of school district taxes that would have been imposed on the former homestead in the last year in which the individual received that exemption for the former homestead had the limitation on tax increases imposed by this section not been in effect.

(h) An individual who receives a limitation on tax increases under this section and who subsequently qualifies a different residence homestead for an exemption under Section 11.13, or an agent of the individual, is entitled to receive from the chief appraiser of the appraisal district in which the former homestead was located a written certificate providing the information necessary to determine whether the individual may qualify for a limitation on the subsequently qualified homestead under Subsection (g) and to calculate the amount of taxes the school district may impose on the subsequently qualified homestead.

(i) If an individual who qualifies for the exemption provided by Section 11.13(c) for an individual 65 years of age or older dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if:

(1) the surviving spouse is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(j) If the individual who qualifies for an exemption provided by Section 11.13(c) for an individual 65 years of age or older dies in the year in which the person turned 65 years of age, except as provided by Subsection (h), the amount to which the surviving spouse's school district taxes are limited under Subsection (g) is the amount of school district taxes imposed on the residence homestead in that year calculated under Section 26.112 as if the individual qualifying for the exemption had lived for the entire year.

(k) If in the first tax year after the individual died, the amount of school district taxes imposed on the residence homestead of the surviving spouse is less than the amount of school district taxes imposed in the preceding year as limited by Subsection (g), in a subsequent tax year the surviving spouse's school district taxes on that residence homestead are limited to the taxes imposed by the district in that first tax year.

SECTION 13. Section 11.41, Tax Code, is amended to read as follows:

Sec. 11.41. PARTIAL OWNERSHIP OF EXEMPT PROPERTY. (a) If [~~Except as provided by Subsection (b) of this section, if~~] a person who qualifies for an exemption as provided by this chapter is not the sole owner of the property to which the exemption applies, the exemption shall be multiplied by a fraction, the numerator of which is [~~limited to~~] the value of the property interest the person owns and the denominator of which is the value of the property.

(b) [~~If a person who qualifies for an exemption as provided by Section 11.13 or 11.22 of this code is not the sole owner of the property to which the exemption applies, the amount of the exemption is calculated on the basis of the value of the property interest the person owns.~~

[~~(c)~~] In the application of this section, community ownership by a person who qualifies for the exemption and the person's [~~his~~] spouse is treated as if the person owns the community interest of the person's [~~his~~] spouse.

SECTION 14. Section 11.42(b), Tax Code, is amended to read as follows:

(b) An exemption authorized by Section 11.11 or by Section 11.13(c) or (d) for an individual 65 years of age or older [~~of this code~~] is effective immediately on qualification for the exemption.

SECTION 15. Sections 11.421 and 11.422, Tax Code, are amended to read as follows:

Sec. 11.421. QUALIFICATION OF RELIGIOUS ORGANIZATION. (a) If the chief appraiser denies a timely filed application for an exemption under Section 11.20 [~~of this code~~] for an organization that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (c)(4) [~~(c)(3)~~] of that section on that date, the organization is eligible for the exemption for the tax year if the organization:

(1) satisfies the requirements of Section 11.20(c)(4) [~~11.20(c)(3) of this code~~] before the later of [~~the following dates~~]:

(A) June 1 of the year to which the exemption applies; or

(B) the 60th [~~30th~~] day after the date the chief appraiser notifies the organization of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) [~~of this subsection~~] files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization has complied with the requirements of Section 11.20(c)(4) [~~11.20(c)(3) of this code~~].

(b) If the chief appraiser cancels an exemption for a religious organization under Section 11.20 [~~of this code~~] that was erroneously allowed in a tax year because he determines that the organization did not satisfy the requirements of Section 11.20(c)(4) [~~11.20(c)(3)~~] on January 1 of that year, the organization is eligible for the exemption for that tax year if the organization:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.20(c)(4) [~~11.20(c)(3) of this code~~] on or before the 60th [~~30th~~] day after the date the chief appraiser notifies the organization of the cancellation; and

(3) within the time provided by Subdivision (2) [~~of this subsection~~] files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization has complied with the requirements of Section 11.20(c)(4) [~~11.20(c)(3) of this code~~].

Sec. 11.422. QUALIFICATIONS OF A SCHOOL. (a) If the chief appraiser denies a timely filed application for an exemption under Section 11.21 [~~of this code~~] for a school that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (d)(5) [~~(d)(3)~~] of that section on that date, the school is eligible for the exemption for the tax year if the school:

(1) satisfies the requirements of Section 11.21(d)(5) [~~11.21(d)(3) of this code~~] before the later of [~~the following dates~~]:

(A) July 1 of the year for which the exemption applies; or

(B) the 60th [~~30th~~] day after the date the chief appraiser notifies the school of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) [~~of this subsection~~], files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the school has complied with the requirements of Section 11.21(d)(5) [~~11.21(d)(3) of this code~~].

(b) If the chief appraiser cancels an exemption for a school under Section 11.21 [~~of this code~~] that was erroneously allowed in a tax year because the appraiser determines that the school did not satisfy the requirements of Section 11.21(d)(5) [~~11.21(d)(3) of this code~~] on January 1 of that year, the school is eligible for the exemption for that tax year if the school:

(1) was qualified for the exemption;

(2) satisfies the requirements of Section 11.21(d)(5) [~~11.21(d)(3) of this code~~] on or before the 30th day after the date the chief appraiser notifies the school of the cancellation; and

(3) in the time provided in Subdivision (2) [~~of this subsection~~] files with the chief appraiser a new completed application stating that the school

has complied with the requirements of Section 11.21(d)(5) [~~11.21(d)(3) of this code~~].

SECTION 16. Subchapter C, Chapter 11, Tax Code, is amended by adding Sections 11.423 and 11.424 to read as follows:

Sec. 11.423. QUALIFICATION OF CHARITABLE ORGANIZATION OR YOUTH ASSOCIATION. (a) If the chief appraiser denies a timely filed application for an exemption under Section 11.18 or 11.19 for an organization or association that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on that date, the organization or association is eligible for the exemption for the tax year if the organization or association:

(1) satisfies the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, before the later of:

(A) June 1 of the year to which the exemption applies; or

(B) the 60th day after the date the chief appraiser notifies the organization or association of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization or association has complied with the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate.

(b) If the chief appraiser cancels an exemption for an organization or association under Section 11.18 or 11.19 that was erroneously allowed in a tax year because the chief appraiser determines that the organization or association did not satisfy the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on January 1 of that year, the organization or association is eligible for the exemption for that tax year if the organization or association:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate, on or before the 60th day after the date the chief appraiser notifies the organization or association of the cancellation; and

(3) within the time provided by Subdivision (2) files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the organization or association has complied with the requirements of Section 11.18(f)(2) or 11.19(d)(5), as appropriate.

Sec. 11.424. CONFLICT BETWEEN GOVERNING REGULATION OF NONPROFIT ORGANIZATION, ASSOCIATION, OR ENTITY AND CONTRACT WITH UNITED STATES. To the extent of a conflict between a provision in a contract entered into by an organization, association, or entity with the United States and a provision in the charter, a bylaw, or other regulation adopted by the organization or entity to govern its affairs in compliance with Section 11.18(f)(2), 11.19(d)(5), 11.20(c)(4), or 11.21(d)(5), the existence of the contract or the organization's compliance with the contract does not affect the eligibility of the organization, association, or entity to receive an exemption under the applicable section of this code, and the organization, association, or entity may comply with the provision in the contract instead of the conflicting provision in the charter, bylaw, or other regulation.

SECTION 17. Section 11.43, Tax Code, is amended by amending Subsections (d) and (f) and adding Subsections (j) and (k) to read as follows:

(d) Except as provided by Subsection (k), a [~~A~~] person required to claim an exemption must file a completed exemption application form before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing an exemption application by written order for a single period not to exceed 60 days.

(f) The comptroller, in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The form must require an applicant to provide the applicant's name and driver's license number, personal identification certificate number, or social security account number. The comptroller shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The comptroller shall include, on application forms for exemptions that do not have to be claimed annually, a statement explaining that the application need not be made annually and that if the exemption is allowed, the applicant has a duty to notify the chief appraiser when the applicant's [~~his~~] entitlement to the exemption ends. In this subsection:

(1) "Driver's license" has the meaning assigned that term by Section 521.001, Transportation Code.

(2) "Personal identification certificate" means a certificate issued by the Department of Public Safety under Subchapter E, Chapter 521, Transportation Code.

(j) An application for an exemption under Section 11.13 must:

(1) list each owner of the residence homestead and the interest of each owner;

(2) state that the applicant does not claim an exemption under that section on another residence homestead;

(3) state that each fact contained in the application is true; and

(4) include a signed statement that the applicant has read and understands the notice of the penalties required by Subsection (f).

(k) A person who qualifies for the exemption authorized by Section 11.13(c) or (d) for an individual 65 years of age or older for a portion of a tax year shall notify the chief appraiser of the person's qualification for the exemption no later than the first anniversary of the date the person qualified for the exemption.

SECTION 18. Section 23.01(b), Tax Code, is amended to read as follows:

(b) The market value of property shall be determined by the application of generally accepted appraisal methods and techniques, including the mass appraisal standards recognized by the Uniform Standards of Professional Appraisal Practice. The [~~and the~~] same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, each property shall be appraised based upon the individual characteristics that affect the property's market value.

SECTION 19. Subchapter A, Chapter 23, Tax Code, is amended by adding Sections 23.011-23.013 to read as follows:

Sec. 23.011. COST METHOD OF APPRAISAL. If the chief appraiser uses the cost method of appraisal to determine the market value of real property, the chief appraiser shall:

(1) use cost data obtained from generally accepted sources;

(2) make any appropriate adjustment for physical, functional, or economic obsolescence;

(3) make available to the public on request cost data developed and used by the chief appraiser and may charge a reasonable fee to the public for the data;

(4) clearly state the reason for any variation between generally accepted cost data and locally produced cost data if the data vary by more than 10 percent; and

(5) make available on request all applicable market data that demonstrate the difference between the replacement cost of the improvements to the property and the depreciated value of the improvements.

Sec. 23.012. INCOME METHOD OF APPRAISAL. If the chief appraiser uses the income method of appraisal to determine the market value of real property, the chief appraiser shall:

(1) use rental income and expense data pertaining to the property if possible and applicable;

(2) make any projections of future rental income and expenses only from clear and appropriate evidence;

(3) use data from generally accepted sources in determining an appropriate capitalization rate; and

(4) determine a capitalization rate for income-producing property that includes a reasonable return on investment, taking into account the risk associated with the investment.

Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL. If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data if possible.

SECTION 20. Subchapter B, Chapter 23, Tax Code, is amended by adding Sections 23.176, 23.21, and 23.22 to read as follows:

Sec. 23.176. APPRAISAL METHOD USED TO CALCULATE VALUE OF OIL OR GAS PRODUCING PROPERTY. (a) This section applies only to property consisting of a separate interest in oil or gas and from which oil or gas is produced.

(b) Each year, the owner of property who renders the property under Section 22.01 may request the chief appraiser to calculate the market value of the property using:

(1) a discounted cash-flow analysis;

(2) a gross-income multiplier;

(3) another generally recognized appraisal method; or

(4) any combination of Subdivisions (1)-(3).

(c) The owner shall include the owner's proposed appraisal method or combination of methods on the rendition statement or property report filed

with the chief appraiser. If the property is owned by more than one person, all of the owners must join in the request.

(d) If the chief appraiser determines that use of the appraisal method or combination of methods requested by the owner of the property will result in an accurate calculation of the market value of the property, the chief appraiser shall calculate the market value of the property using that method or combination.

(e) If the chief appraiser determines that use of the appraisal method or combination of methods requested by the owner of the property will not result in an accurate calculation of the market value of the property, the chief appraiser shall:

(1) notify the owner that the chief appraiser will not calculate the market value of the property using that method or combination; and

(2) inform the owner of the alternative appraisal method or combination of methods that the chief appraiser intends to use to calculate the market value of the property.

(f) Notice to the owner must:

(1) be in writing and delivered before the 15th day after the date the rendition statement or property report is filed; and

(2) inform the owner that the owner is entitled to appeal the chief appraiser's determination to the appraisal review board of the appraisal district by filing a notice of appeal with the board before the 15th day after the date the notice is delivered to the owner.

(g) If an appeal is timely filed with the appraisal review board, the board shall hold a hearing on the appeal. The board shall hold the hearing no later than the 15th day after the date that the notice of appeal is filed. The hearing shall be conducted in the manner provided by Subchapter C, Chapter 41.

(h) The board shall determine whether the taxable value of the property shall be calculated by use of:

(1) the appraisal method or combination of methods requested by the owner;

(2) the appraisal method or combination of methods proposed by the chief appraiser; or

(3) if the board determines that neither method will result in an accurate calculation of the market value of the property, another method determined by the chief appraiser and approved by the board at the hearing.

(i) The determination of the appraisal review board on the appeal is final and may not be appealed by the property owner or the chief appraiser.

(j) The comptroller shall adopt rules and forms to implement this section and provide sufficient copies to each appraisal office in this state. The rules must include a definition of each appraisal method listed in Subsections (b)(1) and (2). An appraisal office shall provide, without charge, a copy of the definitions adopted by the comptroller under this section to a person requesting the definitions.

Sec. 23.21. LIMITATIONS ON APPRAISED VALUE OF RESIDENCE HOMESTEADS. (a) The appraised value of a residence homestead for a tax year may not exceed the lesser of:

(1) the market value of the property; or

(2) the sum of:

(A) 105 percent of the appraised value of the property for the preceding year; and

(B) the market value of all new improvements to the property.

(b) When appraising a residence homestead, the chief appraiser shall:

(1) appraise the property at its market value; and

(2) include in the appraisal records both the market value of the property and the amount computed under Subsection (a)(2).

(c) The limitation provided by Subsection (a) takes effect as to a residence homestead on January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 11.13. The limitation expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect, the owner's spouse or surviving spouse, nor a minor child of the owner qualifies for an exemption under Section 11.13.

(d) This section does not apply to property appraised under Subchapter C, D, E, F, or G.

(e) In this section, "new improvement" means an improvement to a residence homestead that is made after the appraisal of the property for the preceding year and that increases the market value of the property. The term does not include ordinary maintenance of an existing structure or the grounds or another feature of the property.

Sec. 23.22. LIMITATIONS ON FREQUENCY OF APPRAISAL RESIDENCE HOMESTEAD. (a) Except as provided by Subsection (b), the appraiser may not recognize an increase in the appraised value of residential property more than once every three years.

(b) The chief appraiser shall recognize an increase in the appraised value of residential property before the third anniversary of the date of the preceding recognition of an increase in the appraised value of the property if, after the date, the property owner makes an improvement to the property that increases the market value of the property at least 10 percent.

(c) An application is not required for an owner of residential property to receive a benefit under this section.

(d) The chief appraiser shall include in the appraisal records both the market value of the property and its appraised value as determined by this section.

(e) This section does not apply to property appraised under Subchapter C, D, E, F, or G.

SECTION 21. Section 23.56, Tax Code, is amended to read as follows:

Sec. 23.56. LAND INELIGIBLE FOR APPRAISAL AS OPEN-SPACE LAND. (a) Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to agricultural use continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; [~~or~~]

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity; or

(4) the land consists of a parcel of real property that is contiguous to one or more parcels of real property owned by the same person and all parcels taken together would not be eligible for appraisal under this subchapter.

(b) A parcel is not ineligible under Subsection (a)(4) for appraisal under this subchapter because one of the contiguous parcels is the residence homestead of the person.

(c) In this section, "same person" includes:

(1) an individual's spouse or an individual related within the first degree of consanguinity; or

(2) affiliated legal entities.

SECTION 22. Section 25.19, Tax Code, is amended by amending Subsections (b) and (i) and adding Subsection (j) to read as follows:

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the [~~assessed and~~] taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

(5) if the appraised value is greater than it was in the preceding year:

(A) the effective tax rate that would be announced pursuant to Chapter 26 [~~Section 26.04 of this code~~] if the total values being submitted to the appraisal review board were to be approved by the board with an explanation that that rate would raise the same amount of revenue from property taxed in the preceding year as the unit raised for those purposes in the preceding year;

(B) the amount of tax that would be imposed on the property on the basis of the rate described by Paragraph (A) [~~of this subdivision~~]; and

(C) a statement that the governing body of the unit may not adopt a rate that will increase tax revenues for operating purposes from properties taxed in the preceding year without publishing notice in a newspaper that it is considering a tax increase and holding a hearing for taxpayers to discuss the tax increase;

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax

burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a detailed [~~brief~~] explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that:

(A) the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property; and

(B) a taxpayer who objects to increasing taxes and government expenditures should complain to the governing bodies of the taxing units and only complaints about value should be presented to the appraisal office and the appraisal review board.

(i) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

(1) the appraised value of the property in the preceding year;

(2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;

(3) a detailed [~~brief~~] explanation of the time and procedure for protesting the value; and

(4) the date and place the appraisal review board will begin hearing protests.

(j) Delivery with a notice required by Subsection (a) or (i) of a copy of the pamphlet published by the comptroller under Section 5.06 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (i)(3), as applicable.

SECTION 23. Section 26.10, Tax Code, is amended to read as follows:

Sec. 26.10. PRORATING TAXES—LOSS OF EXEMPTION. (a) If the appraisal roll shows that a property is eligible for taxation for only part of a year because an exemption, other than a residence homestead exemption, applicable on January 1 of that year terminated during the year, the tax due against the property is calculated by multiplying the tax due for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days the exemption is not applicable.

(b) If the appraisal roll shows that a property is eligible for taxation at its full appraised value for only part of a year because a residence homestead exemption for an individual 65 years of age or older applicable on January 1 of that year terminated during the year, the tax due against the property is calculated by:

(1) subtracting from:

(A) the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the individual not qualified for the residence homestead exemption on January 1;

(B) the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the individual qualified for the residence homestead exemption for the entire year;

(2) multiplying the remainder determined under Subdivision (1) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed after the date the exemption terminated; and

(3) adding the product determined under Subdivision (2) and the amount described by Subdivision (1)(B).

SECTION 24. Chapter 26, Tax Code, is amended by adding Section 26.112 to read as follows:

Sec. 26.112. PRORATING TAXES—QUALIFICATION BY ELDERLY PERSON FOR 65 OR OVER RESIDENCE HOMESTEAD EXEMPTION. If an individual qualifies for the exemption under Section 11.13(c) or (d) for an individual 65 years of age or older after the beginning of a tax year, the amount of the taxes due on the residence homestead of the individual for the tax year is calculated by:

(1) subtracting:

(A) the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the individual qualified for the residence homestead exemption on January 1; from

(B) the amount of the taxes that otherwise would be imposed on the residence homestead for the entire year had the individual not qualified for the residence homestead exemption;

(2) multiplying the remainder determined under Subdivision (1) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date that the individual qualified for the exemption; and

(3) adding the product determined under Subdivision (2) and the amount described by Subdivision (1)(A).

SECTION 25. Section 33.01, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In lieu of the penalty imposed under Subsection (a), a delinquent tax incurs a penalty of 50 percent of the amount of the tax without regard to the number of months the tax has been delinquent if the tax is delinquent because the property owner received an exemption under:

(1) Section 11.13 and the chief appraiser subsequently cancels the exemption because the residence was not the principal residence of the property owner and the property owner received an exemption for two or more additional residence homesteads for the tax year in which the tax was imposed;

(2) Section 11.13(c) or (d) for a person who is 65 years of age or older and the chief appraiser subsequently cancels the exemption because the property owner was younger than 65 years of age; or

(3) Section 11.13(g) and the chief appraiser subsequently cancels the exemption because the property owner was younger than 55 years of age when the property owner's spouse died.

(e) A penalty imposed under Subsection (d) does not apply if, at any time before the date the tax becomes delinquent, the property owner gives to the chief appraiser of the appraisal district in which the property is located written notice of circumstances that would disqualify the owner for the exemption.

SECTION 26. The heading to Section 33.06, Tax Code, is amended to read as follows:

Sec. 33.06. DEFERRED COLLECTION OF [~~CERTAIN~~] TAXES ON RESIDENCE HOMESTEAD OF ELDERLY PERSON.

SECTION 27. Subchapter A, Chapter 33, Tax Code, is amended by adding Section 33.065 to read as follows:

Sec. 33.065. DEFERRED COLLECTION OF TAXES ON APPRECIATING RESIDENCE HOMESTEAD. (a) An individual is entitled to defer or abate a suit to collect a delinquent tax imposed on the portion of the appraised value of property the individual owns and occupies as the individual's residence homestead that exceeds the sum of:

(1) 105 percent of the appraised value of the property for the preceding year; and

(2) the market value of all new improvements to the property.

(b) An individual may not obtain a deferral or abatement under this section, and any deferral or abatement previously received expires, if the taxes on the portion of the appraised value of the property that does not exceed the amount provided by Subsection (a) are delinquent.

(c) To obtain a deferral, an individual must file with the chief appraiser for the appraisal district in which the property is located an affidavit stating the facts required to be established by Subsection (a). The chief appraiser shall notify each taxing unit participating in the district of the filing. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property for which collection is deferred until the individual no longer owns and occupies the property as a residence homestead.

(d) To obtain an abatement, the individual must file in the court in which the delinquent tax suit is pending an affidavit stating the facts required to be established by Subsection (a). If the taxing unit that filed the suit does not file a controverting affidavit or if, after a hearing, the court finds the individual is entitled to the deferral, the court shall abate the suit until the individual no longer owns and occupies the property as the individual's residence homestead.

(e) A deferral or abatement under this section applies only to ad valorem taxes imposed beginning with the tax year following the first tax year the individual entitled to the deferral or abatement qualifies the property for an exemption under Section 11.13. For purposes of this subsection, the owner of a residence homestead that is qualified for an exemption under Section 11.13 on January 1, 1998, is considered to have qualified the property for the first time in the 1997 tax year.

(f) A tax lien remains on the property and interest continues to accrue during the period collection of delinquent taxes is deferred as provided by this section. The annual interest rate during the deferral period is eight percent instead of the rate provided by Section 33.01. A penalty may not be imposed on the delinquent taxes for which collection is deferred during a deferral period. The additional penalty provided by Section 33.07 may be imposed only if the delinquent taxes for which collection is deferred remain delinquent on or after the 91st day after the date the deferral period expires. A plea of limitation, laches, or want of prosecution does not apply against the taxing unit because of deferral of collection as provided by this section.

(g) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the county for which the appraisal district is established of the provisions of this section and, specifically, the method by which an eligible person may obtain a deferral.

(h) In this section:

(1) "New improvement" means an improvement to a residence homestead that is made after the appraisal of the property for the preceding year and that increases the market value of the property. The term does not include ordinary maintenance of an existing structure or the grounds or another feature of the property.

(2) "Residence homestead" has the meaning assigned that term by Section 11.13.

SECTION 28. The heading to Chapter 41, Tax Code, is amended to read as follows:

CHAPTER 41. ADMINISTRATIVE [~~LOCAL~~] REVIEW

SECTION 29. Section 41.12, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A protest upon which a determination is pending under Subchapter E is not considered to be an undetermined protest for the purposes of Subsection (b).

SECTION 30. Section 41.43, Tax Code, is amended to read as follows:

Sec. 41.43. PROTEST OF DETERMINATION OF VALUE OR INEQUALITY OF APPRAISAL. (a) In a protest authorized by Section 41.41(1) or (2), the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(b) A protest on the ground of unequal appraisal of property shall be determined in favor of the protesting party unless [~~if~~] the appraisal district [~~protesting party~~] establishes that the appraisal ratio of the property is not greater than the median level of appraisal of:

(1) a reasonable and representative sample of other properties in the appraisal district; or

(2) a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the protest.

(c) For purposes of this section, evidence includes the data, schedules, formulas, or other information used to establish the matter at issue.

SECTION 31. Section 41.46(a), Tax Code, is amended to read as follows:

(a) The appraisal review board before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest of the date, time, and place fixed for the hearing on the protest unless the property owner waives in writing notice of the hearing. The board shall deliver the notice not later than the 15th day before the date of the hearing.

SECTION 32. Subchapter D, Chapter 41, Tax Code, is amended by adding Section 41.71 to read as follows:

Sec. 41.71. EVENING AND WEEKEND HEARINGS. At the request of a property owner, an appraisal review board shall schedule a hearing on a protest in the evening or on a Saturday or Sunday.

SECTION 33. Chapter 41, Tax Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. DETERMINATION OF PROTEST BY STATE OFFICE OF ADMINISTRATIVE HEARINGS

Sec. 41.91. DEFINITION. In this subchapter, "office" means the State Office of Administrative Hearings.

Sec. 41.92. RULES. The office shall adopt rules of practice and procedure for protest proceedings under this subchapter.

Sec. 41.93. ELECTION OF REMEDIES. (a) A property owner is entitled to have the office conduct a hearing and determine a protest if:

(1) the property has an appraised value of at least $1 million as determined by the chief appraiser; and

(2) the property owner:

(A) files a notice of protest with the appraisal review board under Section 41.44;

(B) is entitled to a hearing and determination of a protest under that section;

(C) requests in the notice of protest that the office conduct the hearing and determine the protest;

(D) states in the notice of protest the appraised value of the property in the opinion of the property owner; and

(E) pays a filing fee of $100 with the notice of protest.

(b) A property owner who submits a request under this section waives the right to a hearing and determination of the protest by the appraisal review board.

(c) A property owner forfeits the right to a determination by the office of a protest under this subchapter if the property owner does not pay before the delinquency date each taxing unit the amount of taxes the property owner would be required to pay under Section 42.08 to preserve the right to judicial review of a determination by the appraisal review board.

Sec. 41.94. FORWARDING OF NOTICE OF PROTEST AND FILING FEE TO OFFICE. On receipt of a notice under Section 41.93 and the required filing fee, the appraisal review board shall forward the notice and the filing fee to the office.

Sec. 41.95. CONTESTED CASE. Except as otherwise provided by this subchapter, the provisions of Chapter 2001, Government Code, applicable to a contested case apply to the determination of a protest under this subchapter.

Sec. 41.96. BURDEN OF PROOF. Section 41.43 applies to the determination of a protest under this subchapter.

Sec. 41.97. HEARING ON AND DETERMINATION OF PROTEST. (a) The administrative law judge to whom the protest is assigned shall conduct a hearing on the protest.

(b) The hearing shall be held at:

(1) the appraisal office; or

(2) another location convenient to the property owner and the chief appraiser.

(c) The administrative law judge shall issue a final order determining the protest. The final order is binding on the parties and the appraisal review board.

Sec. 41.98. NOTIFICATION OF DETERMINATION; CORRECTION OF APPRAISAL RECORDS. (a) The office shall notify the property owner, chief appraiser, and appraisal review board of the final order determining the protest.

(b) The appraisal review board by written order shall determine the protest in accordance with the final order and shall correct the appraisal records as necessary to conform to the order.

Sec. 41.99. COSTS OF HEARING. The appraisal district shall reimburse the office for the office's costs of conducting hearings under this subchapter.

Sec. 41.100. SANCTIONS. The administrative law judge may impose sanctions against a party or its representative as provided by Sections 2003.047(i) and (j), Government Code, as added by Chapter 765, Acts of the 74th Legislature, 1995.

Sec. 41.101. APPEAL. An order of the appraisal review board determining a protest under this subchapter is considered to have been issued under Subchapter C for purposes of appeal under Chapter 42, except that judicial review of the protest is under the substantial evidence rule.

SECTION 34. Section 403.302(d), Government Code, is amended to read as follows:

(d) For the purposes of this section, "taxable value" means market value less:

(1) the total dollar amount of any exemptions of part but not all of the value of taxable property required by the constitution or a statute that a district lawfully granted in the year that is the subject of the study;

(2) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(3) the total dollar amount of any captured appraised value of property that is located in a reinvestment zone and that is eligible for tax increment financing under Chapter 311, Tax Code;

(4) the total dollar amount of any exemptions granted under Section 11.251, Tax Code;

(5) the difference between the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value may not exceed the fair market value of the land;

(6) the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(7) a portion of the market value of property not otherwise fully taxable by the district at market value because of action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property; [~~and~~]

(8) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income; and

(9) the amount by which the market value of a residence homestead to which Section 23.21 or 23.22, Tax Code, applies exceeds the appraised value of that property as calculated under that section.

SECTION 35. Section 26.052, Tax Code, is repealed.

SECTION 36. (a) This Act takes effect January 1, 1998, but only if the constitutional amendment proposed by H.J.R. No. 4, Acts of the 75th Legislature, Regular Session, 1997, is not approved by the voters and if S.J.R. No. 43, Acts of the 75th Legislature, Regular Session, 1997, is approved by the voters. If the constitutional amendment proposed by H.J.R. No. 4, Acts of the 75th Legislature, Regular Session, 1997, is approved by the voters or if the constitutional amendment proposed by S.J.R. No. 43, Acts of the 75th Legislature, Regular Session, 1997, is not approved by the voters, this Act has no effect.

(b) This Act applies to each tax year that begins on or after the effective date of this Act. The changes in law made by this Act do not apply to ad valorem taxes imposed before the effective date of this Act, and the law as it existed before the effective date of this Act is continued in effect for those purposes.

(c) The change in law made by this Act to Section 6.41, Tax Code, relating to the qualifications of an appraisal review board member applies only to the appointment of a member on or after the effective date of this Act.

(d) The change in law made by this Act to Section 11.43, Tax Code, applies only to an application for an exemption from ad valorem taxation filed on or after the effective date of this Act. An application for an exemption from ad valorem taxation filed before the effective date of this Act is covered by the law in effect on the date the application was filed, and that law is continued in effect for that purpose.

(e) The change in law made by the addition by this Act of Section 33.01(d), Tax Code, applies only to a penalty incurred on ad valorem taxes that become delinquent on or after the effective date of this Act. A penalty incurred on ad valorem taxes that became delinquent before the effective date of this Act is covered by the law in effect when the taxes became delinquent, and that law is continued in effect for that purpose.

(f) Sections 28-33 of this Act apply only to a protest of a property appraisal the notice of which is filed on or after the effective date of this Act. A protest of a property appraisal the notice of which is filed before the effective date of this Act is covered by the law in effect when the notice of protest was filed, and the former law is continued in effect for that purpose.

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend **CSSB 841** (House committee substitute) as follows:

(1) On page 1, line 23, after the word "An" and before the language to be removed, insert the words "individual who is otherwise eligible to serve on the board is not ineligible because of membership on the governing body of a taxing unit. An".

Floor Amendment No. 2

Amend **CSSB 841** by striking SECTION 4 of the bill and renumbering subsequent SECTIONS accordingly.

Amendment No. 3

Amend **CSSB 841** as follows:

(1) On page 4, line 14, between "former" and "officer", insert "member of the governing body,".

(2) On page 4, line 15, between "unit" and "is", insert ", or former officer, director, or employee of the appraisal district".

(3) On page 4, line 19, between "board" and "is", insert "or is a former member of the governing body, officer or employee of a taxing unit, or former officer, director, or employee of the appraisal district".

Floor Amendment No. 4

Amend **CSSB 841** as follows:

Add a new SECTION __ to read as follows: Section 11.146, Tax Code is amended to read as follows:

Section 11.146. MINERAL INTEREST [~~HAVING~~] VALUE [~~OF LESS THAN $500~~].

[~~(a) A person is entitled to an exemption from taxation of a mineral interest the person owns if the interest has a taxable value of less than $500.~~] The market value of a mineral interest may not exceed its net taxable value according to the previous calendar year total of the Texas Monthly Report of Taxable Crude Oil, Producer Liability, and Texas Report of Natural Gas - Supplement, Net Taxable Value as determined by the comptroller pursuant to regulations adopted under Chapters 201 and 202.

[~~(b) The exemption provided by Subsection (a) applies to each separate taxing unit in which a person owns a mineral interest and, for the purpose of Subsection (a), all mineral interests in each taxing unit are aggregated to determine value.~~]

Floor Amendment No. 5

Amend **CSSB 841** as follows:

(1) Insert new SECTIONS to read as follows, and renumber existing SECTIONS appropriately:

SECTION __ . Section 11.42, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A person who acquires property after January 1 of a tax year may receive an exemption authorized by Section 11.17, 11.18, 11.19, 11.20, 11.21, 11.23, or 11.30 for the applicable portion of that tax year immediately on qualification for the exemption.

SECTION __ . Chapter 26, Tax code, is amended by adding Section 26.113 to read as follows:

Sec. 26.113. PRORATING TAXES—ACQUISITION BY NONPROFIT ORGANIZATION. (a) If a person acquires taxable property that qualifies for an is granted an exemption covered by Section 11.42(c) for a portion of the year in which the property was acquired, the amount of tax due on the property for that year is computed by multiplying the amount of taxes imposed on the property for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the property qualified for the exemption.

(b) If the exemption terminates during the year of acquisition, the tax due is computed by multiplying the taxes imposed for the entire year as provided by Section 26.09 by a fraction, the denominator of which is 365 and the numerator of which is the number of days the property does not qualify for the exemption.

(2) Strike lines 14-19 on page 19 and substitute the following:

(d) To receive an exemption the eligibility for which is determined by the claimant's qualifications on January 1 of the tax year, a [~~A~~] person required to claim an exemption must file a completed exemption application form before May 1 and must furnish the information required by the form. A person who after January 1 a tax year acquires property that qualifies for an exemption covered by Section 11.42(c) must apply for the exemption for the applicable portion of that tax year before the first anniversary of the date the person acquires the property. For good cause shown the chief appraiser may extend the deadline for filing an exemption application by written order for a single period not to exceed 60 days.

Floor Amendment No. 6

Amend **CSSB 841** in SECTION 17 of the bill, proposed Section 11.43(j)(4), Tax Code (committee printing page 20, line 21), by striking "signed" and substituting "sworn".

Floor Amendment No. 7

Amend **CSSB 841** as follows:

On page 22, line 20, after the word "possible" and before the "." (period) insert the following: "and shall adjust the comparable sales to the subject property".

Amendment No. 8

Amend **CSSB 841** by deleting Section 18 and adding a new Section 18 to read as follows:

Amend Section 25.01, Tax Code, by adding a new Subsection (d) to read as follows:

If the appraisal district determines the appraised value of a property by use of mass appraisal standards, the mass appraisal standards shall comply with the Uniform Standards of Professional Appraisal Practice.

Floor Amendment No. 9

Amend **CSSB 841** as follows:

(1) On page 21, line 22, SECTION 19, after the word "appraiser" and before the word "and" insert the following: "as applied to all properties within a property category".

(2) On page 21, line 27, SECTION 19, after the word "available" and before the word "on" insert the following: "to the property owner".

(3) On page 22, line 2, SECTION 19, after the word "the" and before "improvements": "owners".

Amendment No. 10

Amend **CSSB 841** by adding the following appropriately numbered section and renumbering the subsequent sections appropriately:

SECTION ____. Subchapter A, Chapter 23, Tax Code, is amended by adding Section 23.0____ to read as follows:

Sec. 23.0____. APPRAISAL METHODS USED. In determining the market value of property, the chief appraiser shall consider the cost, income, and market data comparison methods of appraisal.

Floor Amendment No. 11

Amend **CSSB 841** as follows:

In Section 20 of the bill, on page 24, lines 24-26, strike proposed Section 23.176(i), Tax Code.

Floor Amendment No. 12

Amend **CSSB 841** by adding to Section 20 of the Committee Substitute the following:

"Subchapter B, chapter 23, Tax Code, is amended by adding Sec. 23.23 which reads as follows:"

Section 23.23. PROPERTY USED TO PROVIDE AFFORDABLE HOUSING. In appraising real property that is rented or leased to a low-income individual or family meeting income-eligibility standards established by the owner of the property under regulations or restrictions limiting the amount that the individual or family may be required to pay for the rental or lease of the property, the chief appraiser shall take into account the extent to which that use and limitation reduce the market value of the property.

Floor Amendment No. 13

Amend **CSSB 841** as follows:

(1) In the recital to SECTION 20 of the bill (committee printing, page 22, line 22), strike "and 23.22" and substitute "23.22, and 23.23".

(2) In SECTION 20 of the bill, after added Section 23.22(e), Tax Code (committee printing, page 26, after line 27), add the following:

Sec. 23.23. LAND USE OF WHICH IS RESTRICTED BY GOVERNMENTAL ENTITY. (a) Land is appraised at a nominal value if:

(1) the use of the land is subject to a restriction imposed by a governmental entity, including a restriction to preserve wildlife habitat;

(2) the owner of the land has not consented to the restriction; and

(3) the effect of the restriction is to prohibit all valuable uses of the land.

(b) If land appraised under Subsection (a) is sold, the seller shall notify the chief appraiser of the sale and the sale price not later than the 30th day after the effective date of the sale. The chief appraiser may require the seller to provide evidence of the sale price. If the sale price exceeds the appraised value, an additional tax is imposed on the land equal to the difference between the amount of taxes imposed on the land for each of the five years preceding the year in which the land is sold and the amount of taxes that would have been imposed had the land been appraised at the sale price in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(c) A tax lien attaches to the land on the date of the sale to secure payment of the additional tax and interest imposed by Subsection (b) and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(d) The additional tax imposed by Subsection (b) does not apply to a year:

(1) for which an additional tax under Subsection (b) has already been imposed; or

(2) in which the land was not appraised under Subsection (a).

(e) If the sale applies to only part of a parcel that has been appraised under Subsection (a), the additional tax applies only to that part of the parcel and equals the difference between the amount of taxes imposed on that part of the parcel and the amount of taxes that would have been imposed had that part been taxed on the basis of the sale price.

(f) The assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(g) The sanctions provided by Subsection (b) do not apply if the land is sold for a right-of-way or is condemned.

Floor Amendment No. 14

Amend **CSSB 841** by striking Section 21 of the bill and renumbering subsequent sections of the bill accordingly.

Floor Amendment No. 15

Amend **CSSB 841** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill accordingly:

SECTION ___. Section 25.195, Tax Code, is amended to read as follows:

Sec. 25.195. INSPECTION BY PROPERTY OWNER. (a) After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a) [~~of this code~~], a property owner or the owner's [~~his~~] designated agent may inspect the appraisal records relating to property of the property owner, together with supporting data, [~~and~~] schedules, and, except as provided by Subsection (b), any other material or information held by the chief appraiser, including material or information obtained under Section 22.27, that is obtained or used in making appraisals for the appraisal records relating to that property.

(b) The owner of property other than vacant land or real property used for residential purposes or the owner's agent may not inspect any material or information obtained under Section 22.27.

Floor Amendment No. 16

Amend **CSSB 841** as follows:

(1) Add the following appropriately numbered sections to the bill and renumber the subsequent sections appropriately:

SECTION ____. Section 25.25, Tax Code, is amended by amending Subsection (e) and adding Subsections (l) and (m) to read as follows:

(e) If the chief appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, a [~~A~~] party bringing a motion under Subsection (c) or (d) [~~of this section~~] is entitled on request to a hearing on and a determination of the motion by the appraisal review board. A party bringing a motion under this section must describe the error or errors that the motion is seeking to correct. Not later than 15 days before the date of the hearing, the board shall [~~must~~] deliver written notice of the date, time, and place of the hearing to the chief appraiser, the property owner, and the presiding officer of the governing body of each taxing unit in which the property is located. The chief appraiser, the property owner, and each taxing unit are entitled to present evidence and argument at the hearing and to receive written notice of the board's determination of the motion. A property owner who files the motion must comply with the payment requirements of Section 42.08 [~~of this code~~] or forfeit the [~~he forfeits his~~] right to a final determination of the motion.

(l) A motion may be filed under Subsection (c) regardless of whether, for a tax year to which the motion relates, the owner of the property protested under Chapter 41 an action relating to the value of the property that is the subject of the motion.

(m) The hearing on a motion under Subsection (c) or (d) shall be conducted in the manner provided by Subchapter C, Chapter 41.

SECTION ___. Section 42.01, Tax Code, is amended to read as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41 [~~of this code~~]; or

(B) a determination of an appraisal review board on a motion filed under Section 25.25; or

(2) [~~an order of the comptroller determining a protest by the property owner of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles as provided by Subchapter A, Chapter 24 of this code; or~~

[~~(3)~~] an order of the comptroller issued as provided by Subchapter B, Chapter 24, [~~of this code~~] apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

(2) In SECTION 36 of the bill, add the following appropriately lettered subsection and reletter the subsequent subsections appropriately:

( ) The change in law made by this Act to Section 25.25, Tax Code, applies only to a motion to correct an appraisal roll filed on or after the effective date of this Act. A motion filed before the effective date of this Act is covered by the law in effect when the motion was filed, and that law is continued in effect for that purpose.

Floor Amendment No. 18

Amend **CSSB 841** as follows:

(1) In Section 30 of the bill, on page 37, amend Section 41.43, Tax Code, as follows:

(a) On line 10, strike the word "or";

(b) On line 14, strike the period and substitute in its place the following: "; or" ; and

(c) Add a new subsection (b)(3) to Section 41.43, Tax Code, to read as follows:

(3) a reasonable number of comparable properties appropriately adjusted.

(2) Add a new section to the bill to read as follows:

SECTION __. Section 42.26, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) The district court shall grant relief on the ground that a property is appraised unequally if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

Amendment No. 20

Amend **CSSB 841** by striking SECTIONS 28, 29, and 33 of the bill and renumbering the subsequent sections and the cross-references to those sections appropriately.

Amendment No. 21

Amend **CSSB 841** by adding the following appropriately numbered sections and renumber the subsequent sections appropriately:

SECTION __ . Section 1.07, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) An official or agency required by this title to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid, unless this section or another provision in this title requires a different method of delivery.

(d) A notice required by Section 11.45(d), 23.44(d), 23.57(d), 23.79(d), or 23.85(d) must be sent by certified mail.

SECTION ___. Section 22.23(a), Tax Code, is amended to read as follows:

(a) Rendition statements and property reports must be delivered to the chief appraiser after January 1 and not later than [~~before~~] April 15, expect as provided by Section 22.02 [~~of this code~~].

SECTION ___. Section 41.01, Tax Code, is amended to read as follows:

Sec. 41.01. Duties of Appraisal Review Board. (a) The appraisal review board shall:

(1) determine protests initiated by property owners;

(2) determine challenges initiated by taxing units;

(3) correct clerical errors in the appraisal records and the appraisal rolls;

(4) act on motions to correct appraisal rolls under Section 25.25;

(5) determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23; and

(6) take any other action or make any other determination that this title specifically authorizes or requires.

(b) The board may not review or reject an agreement between a property owner or the owner's agent and the chief appraiser under Section 1.111(e).

SECTION _____. Section 41.45, Tax Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) In addition to the grounds for a postponement under Subsection (e), the board shall postpone the hearing to a later date if:

(1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the appraisal review board of another appraisal district;

(2) the hearing before the other appraisal review board is scheduled to occur on the same date as the hearing set by the appraisal review board from which the postponement is sought;

(3) the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board bears an earlier postmark than the notice of hearing delivered by the board from which the postponement is sought or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and

(4) the property owner or the owner's agent includes with the request for a postponement a copy of the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board.

(h) Before the hearing on a protest or immediately after the hearing begins, the chief appraiser and the property owner or the owner's agent shall each provide the other with a copy of any written material that the person intends to offer or submit to the appraisal review board at the hearing.

SECTION___. Section 42.06, Tax Code, is amended to read as follows:

Sec. 42.06. Notice of Appeal. (a) To exercise the party's right to appeal an order of appraisal review board, a party other than a property owner must file written notice of appeal other than a property owner must file written notice of appeal within 15 days after the date the party receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 that the order appealed has been issued. To exercise the right to appeal an order of the comptroller, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the comptroller's order. A property owner is not required to file a notice of appeal under this section.

(b) [~~The owner of an item of property having an appraised value in excess of $1 million who appeals an order of the appraisal review board or comptroller under this chapter must file a written notice of appeal not later than the 15th day after the date the the owner receives the notice required by Section 41.47 or the order of the comptroller, as applicable. A property owner who fails to comply with this subsection does not forfeit the right to appeal, but is liable for a penalty to each taxing unit in which the property is taxable in an amount equal to five percent of the taxes finally determined to be due on the property. For purposes of this subsection, the appraised value of the property is its appraised value for the current year according to the certified appraisal roll or the determination of the comptroller, as applicable, as modified by order of the appraisal review board or comptroller pursuant to a protest.~~]

[~~c~~] A party required to file a notice of appeal under this section other than a chief appraiser who appeals an order of an appraisal review board shall file the notice with the chief appraiser of the appraisal district for which the appraisal review board is established. A chief appraiser who appeals an order of an appraisal review board shall file the notice with the appraisal review board. A party who appeals an order of the comptroller shall file the notice with the comptroller.

(c) [~~(d)~~] If the chief appraiser, a taxing unit, or a county appeals, the chief appraiser, if the appeal is of an order of the appraisal review board, or the comptroller, if the appeal is of an order of the comptroller, shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

(d) [~~(e)~~] On the filing of a notice of appeal, the chief appraiser shall indicate where appropriate those entries on the appraisal records that are subject to the appeal.

Floor Amendment No. 22

Amend **CSSB 841** by adding the following section to the bill, appropriately numbered, and renumbering subsequent sections of the bill accordingly:

SECTION ___. Section 42.43(b), Tax Code, is amended to read as follows:

(b) For a refund made under this section because an exemption under Section 11.20 that was denied by the chief appraiser or appraisal review board is granted, the taxing unit shall include with the refund interest on the amount refunded calculated at an annual rate that is equal to the

auction average rate quoted on a bank discount basis for three-month treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week in which the taxes became delinquent, but not more than 10 percent, calculated from the delinquency date for the taxes until the date the refund is made. For any other refund made under this section, the taxing unit shall include with the refund interest on the amount refunded at an annual rate of [~~that is equal to the auction average rate quoted on a bank discount basis for three-month treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week in which the taxes became delinquent, but not more than~~] eight percent, calculated from the delinquency date for the taxes until the date the refund is made.

Floor Amendment No. 23

Amend **CSSB 841** by adding an appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION ____. Chapter 550, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2372p-3, Vernon's Texas Civil Statutes), is amended by adding Section 6A to read as follows:

Sec. 6A. REAPPRAISAL OF REAL PROPERTY. An appraisal district may not reappraise real property solely because the owner of the property is an applicant for or the holder of a license under this Act. This section does not prohibit an appraisal district from reappraising real property in connection with the appraisal of real property in the same general area or if requested to do so by the board or by the applicant or license holder.

Floor Amendment No. 24

Amend **CSSB 841** as follows:

On page 33, line 19, strike Subsection (e) and substitute the following:

(e) A penalty imposed under Subsection (d) does not apply if:

(1) the exemption was granted by the appraisal district or board and not at the request or application of the property owner or the property owner's agent, or

(2) at any time before the date the tax becomes delinquent, the property owner gives to the chief appraiser of the appraisal district in which the property is located written notice of circumstances that would disqualify the owner for the exemption.

Floor Amendment No. 27

Amend **CSSB 841** by adding the following appropriately numbered section and renumbering the subsequent sections appropriately:

SECTION __. Section 23.55(j), Tax Code, as added by Chapter 471, Acts of the 74th Legislature, Regular Session, 1995, applies to a change of use of land:

(1) on or after June 12, 1995; or

(2) before June 12, 1995, if:

(A) the change of use occurred on or after June 12, 1990; and

(B) on June 12, 1995, the owner of the land had not been determined to be liable for the sanctions provided by Section 23.55(a), Tax Code, by a final and nonappealable order or judgment.

Floor Amendment No. 28

Amend **CSSB 841** by striking SECTION 12 of the bill and substituting the following:

SECTION 12. Section 11.26, Tax Code, is amended by amending Subsection (a) and adding Subsections (g), (h), (i), (j), and (k) to read as follows:

(a) Except as provided by Subsection (b) [~~of this section~~], a school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years or older above the amount of the tax it imposed in the first year the individual qualified that residence homestead for the exemption provided by [~~Subsection (c) of~~] Section 11.13(c) for an individual 65 years of age or older [~~11.13 of this code~~]. If the individual qualified that residence homestead for the exemption after the beginning of that first year, the maximum amount of taxes that a school district may impose on that residence homestead in a subsequent year is determined as provided by Section 26.112 as if the individual qualified that residence homestead for the exemption for that entire first year, except as provided by Subsection (b). If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the exemption for the next year, and if the school district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a school district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it imposed in the year immediately following the first year for which the individual qualified that residence homestead for the exemption, except as provided by Subsection (b). The tax officials shall continue to appraise the property and to calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the tax imposed in the first year the individual qualified the residence homestead for the exemption.

(g) If an individual who qualifies for the exemption provided by Section 11.13(c) for an individual 65 years of age or older dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if:

(1) the surviving spouse is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(h) If an individual who qualifies for an exemption provided by Section 11.13(c) for an individual 65 years of age or older dies in the first year in which the individual qualified for the exemption and the individual first qualified for the exemption after the beginning of that year, except as provided by Subsection (i), the amount to which the surviving spouse's school district taxes are limited under Subsection (g) is the amount of school district taxes imposed on the residence homestead in that year calculated under Section 26.112 as if the individual qualifying for the exemption had lived for the entire year.

(i) If in the first tax year after the year in which an individual dies in the circumstances described by Subsection (h) the amount of school district taxes imposed on the residence homestead of the surviving spouse is less than the amount of school district taxes imposed in the preceding year as limited by Subsection (h), in a subsequent tax year the surviving spouse's school district taxes on that residence homestead are limited to the amount of taxes imposed by the district in that first tax year after the year in which the individual dies.

(j) Except as provided by Subsection (b), if an individual who receives a limitation on tax increases imposed by this section subsequently qualifies a different residence homestead for an exemption under Section 11.13, a school district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes the school district would have imposed on the subsequently qualified homestead in the first year in which the individual receives that exemption for the subsequently qualified homestead had the limitation on tax increases imposed by this section not been in effect, multiplied by a fraction the numerator of which is the total amount of school district taxes imposed on the former homestead in the last year in which the individual received that exemption for the former homestead and the denominator of which is the total amount of school district taxes that would have been imposed on the former homestead in the last year in which the individual received that exemption for the former homestead had the limitation on tax increases imposed by this section not been in effect.

(k) An individual who receives a limitation on tax increases under this section and who subsequently qualifies a different residence homestead for an exemption under Section 11.13, or an agent of the individual, is entitled to receive from the chief appraiser of the appraisal district in which the former homestead was located a written certificate providing the information necessary to determine whether the individual may qualify for a limitation on the subsequently qualified homestead under Subsection (j) and to calculate the amount of taxes the school district may impose on the subsequently qualified homestead.

Floor Amendment No. 29

Amend **CSSB 841** as follows:

(1) On page 13, between lines 22 and 23, insert a new Subsection (l) to read as follows:

(l) For purposes of the limitation on tax increases provided by Subsection (j), the governing body of a school district in a county with a population of fewer than 75,000 in a manner provided by law for official action by the governing body may elect to apply the limitation provided by Subsection (j) to the residence homestead of an individual as if that subsection were in effect on January 1, 1993. The governing body must make the election before January 1, 1999. The election applies only to taxes imposed in a tax year that begins after the tax year in which the election is made.

Floor Amendment No. 30

Amend **CSSB 841** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION __. Section 31.01(c), Tax Code, is amended to read as follows:

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, or 23.76, as applicable, of this code;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due, the due date, and the delinquency date;

(8) explain the payment option and discounts provided by Sections 31.03 and 31.05 of this code, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax; [~~and~~]

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; and

(11) include any other information required by the comptroller.

Floor Amendment No. 31

Amend **CSSB 841** as follows:

1. By adding the correctly numbered following sections:

SECTION __. Section 26.05(d), Tax Code, is amended to read as follows:

(d) The governing body may not adopt a tax rate that if applied to the total taxable value would impose an amount of taxes that exceeds last year's levy [~~exceed the lower of the rollback tax rate or 103 percent of the effective tax rate calculated as provided by Section 26.04 of this code~~] until it has held a public hearing [~~on the proposed increase~~] and has otherwise complied with Section 26.06 [~~of this code~~]. [~~The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the rollback tax rate or 103 percent of the effective tax rate and may not adopt a higher rate unless it first complies with Section 26.06 of this code.~~]

SECTION __. Section 26.06(b), as amended by Chapters 456 and 947, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. The notice must:

(1) contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON TAX [~~RATE~~] INCREASE

"The (name of the taxing unit) will hold a public hearing on a proposal to increase total tax revenues from properties on the tax roll [~~in (the preceding~~

~~year)~~] by (percentage by which taxes to be imposed under proposed tax rate exceed last year's levy [~~of increase over the lower of the effective or rollback tax rates~~]) percent. Your individual taxes may increase [~~at a greater or lesser rate,~~] or [~~even~~] decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

"The public hearing will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to consider the [~~tax~~] increase in total tax revenues or, if one or more were absent, [~~or~~] indicating the absences.)"; and

(2) contain the following information:

(A) the unit's adopted tax rate for the preceding year and the proposed tax rate, expressed as an amount per $100;

(B) the difference, expressed as an amount per $100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding year;

(C) the average appraised value of a residence homestead in the taxing unit in the preceding year and in the current year; the unit's homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average taxable value of a residence homestead in the unit in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(D) the amount of tax that would have been imposed by the unit in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or person 65 years of age or older;

(E) the amount of tax that would be imposed by the unit in the current year on a residence homestead appraised at the average appraised value of a residence homestead in the current year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax tax rate is adopted; and

(F) the difference between the amounts of tax calculated under Paragraphs (D) and (E) of this subdivision, expressed in dollars and cents and described as the annual increase or decrease, as applicable, in the tax to be imposed by the unit on the average residence homestead in the unit in the current year if the proposed tax rate is adopted.

SECTION ___. Sections 26.06(d),(e), and (g), Tax Code, are amended to read as follows:

(d) At the public hearing the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed increase in total tax revenues [~~rate increase~~]. After the hearing it shall give notice of the meeting at which it will vote on the proposed increase in total tax revenues [~~rate~~] and the notice shall be in the same form as prescribed by Subsections (b) and (c) [~~of this section~~], except that it must state the following:

"NOTICE OF VOTE ON TAX RATE

"The (name of the taxing unit) conducted a public hearing on a proposal to increase the total tax revenues of the (name of the taxing unit [~~your property taxes~~] by (percentage by which taxes to be imposed under proposed tax rate exceed last year's levy [~~of increase over the lower of the effective tax rate or rollback tax rate~~]) percent on (date and time public hearing was conducted).

"The (governing body of the taxing unit) is scheduled to vote on the tax rate that will result in that tax increase at a public meeting to be held on (date and time) at (meeting place)."

(e) The meeting to vote on the increase may not be earlier than the third day or later than the 14th day after the date of the public hearing. The meeting must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. If the governing body does not a adopt a [~~and increased~~] rate that would impose an amount of taxes that exceeds last year's levy by the 14th day, it must give a new notice under Subsection (d) [~~of this section~~] before it may adopt a rate that would impose an amount of taxes that exceeds last year's levy [~~exceeds the tax rate calculated as provided by Section 26.04 of this code~~].

(f) [~~(g)~~] The comptroller by rule shall prescribe the language and format to be used in the part of the notice required by Subsection (b)(2) [~~of this section~~]. A notice under Subsection (b) is not valid if it does not substantially conform to the language and format prescribed by the comptroller under this subsection.

2. By renumbering subsequent sections accordingly.

Floor Amendment No. 33

Amend **CSSB 841** as follows:

(1) In SECTION 22 of the bill (committee printing, page 29, lines 10-12), strike the introductory language to the section and substitute the following:

SECTION 22. Section 25.19, Tax Code, is amended by amending Subsections (b) and (i) and adding Subsections (j) and (k) to read as follows:

(2) At the end of SECTION 22 of the bill (committee printing, at the end of page 30), add the following:

(k) The chief appraiser shall include with a notice required by Subsection (a) or (i):

(1) a copy of a notice of protest form as prescribed by the comptroller under Section 41.44(d);

(2) an envelope addressed to the appraisal review board; and

(3) instructions for completing and mailing the form and requesting a hearing on the protest.

Floor Amendment No. 34

Amend **CSSB 841** by adding the following new section to the bill, appropriately numbered, and renumbering subsequent sections of the bill accordingly:

SECTION ___. (A) SECTION 26.05 (d), Tax Code, is amended to read as follows:

(d) The governing body may not adopt a tax rate that if applied to the total table value would impose an amount of taxes that exceeds last year's levy [~~exceeds the lower of the rollback tax rate or 103 percent of the effective tax rate calculated as provided by Section 26.04 of this code~~] until it has held a public hearing [~~on the proposed increase~~] and has otherwise complied with Sections [~~Section~~] 26.06 and 26.065 [~~of this code~~]. [~~The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the rollback tax rate or 103 percent of the effective tax rate and may not adopt a higher rate unless it first complies with Section 26.06 of this code.~~]

(b) Chapter 26, Tax Code, is amended by adding Section 26.065 to read as follows:

Sec. 26.065. NOTICE OF HEARING ON MUNICIPAL TAX INCREASE. (a) The governing body of a municipality required to hold a public hearing by Section 26.05(d) shall, if the municipality mails a bill to customers of a utility, including a water, watewater, or electric utility, include a copy of the notice with the utility bill sent to the utility customers who reside in the municipality. The notice must appear on one 8-1/2 x 11-inch piece of paper, and the wording of the notice must cover substantially the entire page. The bill may contain only one other 8-1/2 x 11-inch piece of paper in addition to the bill and the notice required by this subsection.

(b) If the municipality is not required to mail a notice under Subsection (a), or if the municipality mails the customers' bills on a postcard or similar type document that could not be accompanied by an 8-1/2 x 11-inch sheet of paper, the municipality shall mail a copy of the notice to the household of each person who voted in the most recent contested general election for municipal officers conducted in the municipality, according to the voting records of the municipality. The notice must appear on one 8-1/2 x 11-inch piece of paper, and the wording of the notice must cover substantially the entire page.

(c) The notice required by this section must contain a statement in the following form:

"NOTICE OF PUBLIC HEARING ON MUNICIPAL TAX INCREASE

"This notice is required by law. It is to inform you that the governing body of (name of municipality) will hold a public hearing on a proposal to increase total tax revenues from properties on the tax roll in (the preceding year) by (percentage by which the proposed tax rate exceeds the lower of the municipality's effective or rollback tax rate) percent. The taxes you pay to (name of municipality) may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property subject to taxation by (name of municipality).

"The governing body of (name of municipality) will hold the public hearing on (date and time) at (meeting place)."

(d) If the municipality has access to a public, educational, or governmental television channel, the municipality shall also broadcast the

notice described by Subsection (c) on that channel. The notice must be broadcast at least five times a day for at least 60 seconds each time on each of seven days preceding the date of the public hearing on the proposed tax increase.

(e) Notwithstanding Section 26.06(a), the governing body of the municipality may not hold the public hearing required by Section 26.05 before the seventh day after the earliest date on which all or substantially all the notices requred by Subsection (a) or (b) have been mailed.

Floor Amendment No. 35

Amend **CSSB 841** as follows:

(1) Strike the recital to SECTION 2 of the bill (committee printing, page 1, lines 13 and 14) and substitute the following:

SECTION 2. Section 6.03, Tax Code, is amended by amending Subsections (a), (b), (c), (d), and (1) to read as follows;

(2) In SECTION 2 of the bill, between amended Subsections 6.03(c) and (1), Tax Code (committee printing, page 2, between lines 25 and 26), insert the following:

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district. For a county in which the commissioners court determines or approves the property tax rate of a hospital district that participates in the same appraisal district as the county, the total dollar amount of property taxes imposed in the appraisal district by the county includes the dollar amount of property taxes imposed in the appraisal district by the hospital district.

The amendments were read.

Senator Cain moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 841** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Harris, Armbrister, Bivins, and Ratliff.

CONFERENCE COMMITTEE ON HOUSE BILL 768

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 768** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 768** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Shapleigh, Sibley, Fraser, and Luna.

CONFERENCE COMMITTEE ON HOUSE BILL 2086

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2086** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2086** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Madla, Cain, Harris, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 311

Senator Patterson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 311** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 311** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Patterson, Chair; Whitmire, Fraser, Armbrister, and Brown.

SENATE BILL 534 WITH HOUSE AMENDMENTS

Senator Harris called **SB 534** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 534** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the collection of claims for recovery of money under subrogation and third-party reimbursement rights arising from medical payments by health and human services agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.0391 and 531.0392 to read as follows:

Sec. 531.0391. SUBROGATION AND THIRD-PARTY REIMBURSEMENT COLLECTION CONTRACT. (a) The commission shall enter into a contract under which the contractor is authorized on behalf of the commission or a health and human services agency to recover money under a subrogation or third-party reimbursement right held by the commission or a health and human services agency arising from payment of medical expenses. The contract must provide that:

(1) the commission or agency, as appropriate, shall compensate the contractor based on a percentage of the amount of money recovered by the contractor for the commission or agency; and

(2) with the approval of the attorney required by other law to represent the commission or agency in court, the contractor may represent the commission or agency in a court proceeding to recover money under a subrogation or third-party reimbursement right if the representation is cost-effective and specifically authorized by the commission.

(b) The commission shall develop a process for identifying claims for the recovery of money under a subrogation or third-party reimbursement right described by this section and referring the claims to the contractor. A health and human services agency shall cooperate with the contractor on a claim of the agency referred to the contractor for collection.

(c) The commission is not required to enter into a contract under Subsection (a) if the commission cannot identify a contractor who is willing to contract with the commission on reasonable terms. If the commission cannot identify such a contractor, the commission shall develop and implement alternative policies to ensure the collection of money under a subrogation or third-party reimbursement right.

(d) The commission may allow a state agency other than a health and human services agency to be a party to the contract required under Subsection (a). In that case, the commission shall modify the contract as necessary to reflect the services to be provided by the contractor to the additional state agency.

Sec. 531.0392. SUBROGATION AND THIRD-PARTY REIMBURSEMENT; HOSPITAL PROVIDERS. A hospital provider may recover from a third party any funds to which the commission or a health and human services agency has a right of recovery under Section 32.033, Human

Resources Code. In addition, a hospital provider may file a lien under Chapter 55, Property Code, to recover the full amount of hospital charges for services provided to a recipient of medical assistance under Chapter 32, Human Resources Code. On recovery from a third party, the hospital provider shall reimburse the commission or a health and human services agency for any amount previously paid to the hospital provider by the commission or the health and human services agency, as appropriate. The combined amounts received by the hospital provider from the commission or a health and human services agency and the third party may not exceed the amount charged by the hospital for the injured recipient's first 100 days of hospitalization.

SECTION 2. Not later than February 1, 1998, the Health and Human Services Commission shall enter into an initial contract or implement the alternative policies as required by Section 531.0391, Government Code, as added by this Act.

SECTION 3. Not later than September 1, 1998, the Health and Human Services Commission shall prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, and clerks of the standing committees of the senate and house of representatives with primary jurisdiction over human services a report concerning:

(1) the commission's progress in improving collection of money under subrogation and third-party reimbursement rights relating to medical expenses paid by the commission and health and human services agencies;

(2) the adequacy of existing lien and subrogation statutes;

(3) any feature of a contract or a claims processing procedure of the commission or a health and human services agency that limits the ability of the commission or agency to collect money under a subrogation or third-party reimbursement right described by Subdivision (1) of this section; and

(4) any other matter affecting the ability of the commission or a health and human services agency to collect money under a subrogation or third-party reimbursement right described by Subdivision (1) of this section.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 534** as follows:

(1) Amend SECTION 1, Sec. 531.0391, by adding a new subsection (e) to read as follows:

"(e) Any contract entered into under Subsection (a) shall not affect or infringe on any existing collection contract."

(2) Amend SECTION 1, Sec. 531.0392, by striking the subsection in its entirety and substituting the following:

Sec.531.0392. SUBROGATION AND THIRD-PARTY REIMBURSEMENT; HOSPITAL PROVIDERS. To the extent permissible by law, a hospital provider may claim a right of subrogation as to any

funds to which the commission or a health and human services agency has a right of recovery under Section 32.033, Human Resources Code. If the hospital provider's claim for subrogation is based on an injured recipient making a claim for damage from a third party tortfeasor, the hospital provider's rights of subrogation are secondary to that of the commission, may not be asserted directly or indirectly against the injured recipient, and may only be asserted when the injured recipient has fully recovered their actual damages from the third party. The combined amounts received by the hospital provider from the commission and the third party may not exceed the amount charged by the hospital for the injured recipient's first 100 days of hospitalization.

The amendments were read.

Senator Harris moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 534** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Ellis, Madla, Duncan, and Cain.

SENATE BILL 383 WITH HOUSE AMENDMENTS

Senator Cain called **SB 383** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 383** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of preferred provider benefit plans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 3, Insurance Code, is amended by adding Article 3.70-3C to read as follows:

Art. 3.70-3C. PREFERRED PROVIDER BENEFIT PLANS

Sec. 1. DEFINITIONS. In this article:

(1) "Emergency care" means health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(2) "Health care provider" or "provider" means a practitioner, institutional provider, or other person or organization, other than a physician, who:

(A) furnishes health care services; and

(B) is licensed or otherwise authorized to practice in this state.

(3) "Health insurance policy" means a group or individual insurance policy, certificate, or contract that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(4) "Hospital" means a licensed public or private institution as defined by:

(A) Chapter 241, Health and Safety Code; or

(B) Subtitle C, Title 7, Health and Safety Code.

(5) "Institutional provider" means a hospital, nursing home, or any other medical or health-related service facility that cares for the sick or injured or provides care for other coverage that may be provided through a health insurance policy.

(6) "Insurer" means a life, health, and accident company, a health and accident company, a health insurance company, or any other company operating under Chapter 3, 10, 20, 22, or 26 of this code authorized to issue, deliver, or issue for delivery in this state health insurance policies, certificates, or contracts.

(7) "Life-threatening" means a disease or condition in which the likelihood of death is high unless the course of the disease or condition is interrupted.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Practitioner" means a person who practices a healing art and is:

(A) a practitioner described by Section 2(B), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), or Article 21.52 of this code; or

(B) an occupational therapist, physical therapist, or advanced practice nurse.

(10) "Preferred provider" means a physician, practitioner, hospital, institutional provider, or health care provider, or an organization of physicians or health care providers, who contracts with an insurer to provide medical care or health care to insureds covered by a health insurance policy, certificate, or contract.

(11) "Prospective insured" means:

(A) for group coverage, an individual, including a dependent, who is eligible for coverage under a health insurance policy issued to the group; or

(B) for individual coverage, an individual, including a dependent, who is eligible for coverage and who has expressed an interest in purchasing an individual health insurance policy.

(12) "Quality assessment" means a mechanism established and utilized by an insurer for the purposes of evaluating, monitoring, or improving the quality and effectiveness of the medical care delivered by physicians or health care providers to persons covered by a health insurance policy to ensure that the care delivered is consistent with that delivered by an ordinary, reasonable, prudent physician or health care provider under the same or similar circumstances.

(13) "Service area" means the geographic area or areas set forth in the health insurance policy or preferred provider contract in which a network of preferred providers is offered and available.

Sec. 2. APPLICATION. This article applies to any preferred provider benefit plan in which an insurer provides, through its health insurance policy, for the payment of a level of coverage that is different from the basic level of coverage provided by the health insurance policy if the insured uses a preferred provider. This article does not apply to provisions in a health insurance policy for dental care benefits.

Sec. 3. CONTRACTING REQUIREMENTS. (a) If it meets the requirements of this section, a health insurance policy that includes benefits different from the basic level of coverage for the use of preferred providers:

(1) is not:

(A) unjust under Article 3.42 of this code; or

(B) unfair discrimination under:

(i) Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995; or

(ii) Article 21.21-8 of this code; and

(2) does not violate:

(A) Section 2(B), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas Insurance Code); or

(B) Article 21.52 of this code.

(b) A physician, practitioner, institutional provider, or health care provider other than a physician, practitioner, or institutional provider, if those other health care providers are included by the insurer as preferred providers, who is licensed to treat injuries or illnesses or to provide services covered by the health insurance policy that comply with the terms and conditions established by the insurer for designation as preferred providers may apply for and shall be afforded a fair, reasonable, and equivalent opportunity to become a preferred provider. An insurer may not unreasonably withhold designation as a preferred provider.

(c) If an insurer withholds from a physician designation as a preferred provider, the insurer shall provide a reasonable review mechanism that incorporates, in an advisory role only, a review panel. Any recommendation of the review panel shall be provided on request to the affected physician. If an insurer makes a determination that is contrary to a recommendation of the review panel, the insurer shall also provide a written explanation of the insurer's determination on request to the affected physician.

(d) The review panel must be composed of at least three individuals who are selected by the insurer from a list of the physicians contracting with the insurer and must include one member who is a physician in the same specialty as the affected physician or a similar specialty, if available. The physicians contracting with the insurer in the applicable service area shall provide the insurer with the list of physicians.

(e) The insurer shall give a physician or health care provider not designated as a preferred provider on initial application written reasons for the insurer's denial of the designation. Unless otherwise limited by this code, this subsection does not prohibit an insurer from rejecting an application from a physician or health care provider based on a determination that the preferred provider benefit plan has sufficient qualified providers.

(f) An insurer, when sponsoring a preferred provider benefit plan, shall immediately notify, by publication or in writing to each physician and practitioner, each physician and practitioner in the geographic area covered by the plan of its intent to offer the plan and of the opportunity to participate in the plan. The insurer shall provide the notice and opportunity to participate annually to noncontracting physicians and practitioners in the geographic area covered by the plan. The insurer on request shall make available to a physician or health care provider information concerning the application process and qualification requirements for participation as a preferred provider in the plan.

(g) An insurer that markets a preferred provider benefit plan must contract with physicians and health care providers to ensure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the health insurance policy in a manner that ensures both availability and accessibility of adequate personnel, specialty care, and facilities.

(h) Each insured shall have the right to treatment and diagnostic techniques as prescribed by a physician or other health care provider that are included in the preferred provider benefit plan.

(i) Each contract by an insurer with a physician or a physicians group must include a mechanism for the resolution of complaints initiated by an insured, physician, or physicians group. That mechanism must provide for reasonable due process and must include, in an advisory role only, a review panel selected in the manner described by Subsection (d) of this section.

(j) Before terminating a contract with a physician, the insurer shall provide written reasons for the termination. Before termination of the contract with a physician, but within a period not to exceed 60 days, the insurer, on request, shall provide a reasonable review mechanism that incorporates, in an advisory role only, a review panel selected in the manner described in Subsection (d) of this section, except in cases in which there is:

(1) imminent harm to a patient's health;

(2) an action by a state medical or other physician licensing board or other government agency that effectively impairs a physician's ability to practice medicine; or

(3) fraud or malfeasance.

(k) A recommendation of the review panel shall be provided to the affected physician. If the insurer makes a determination that is contrary to a recommendation of the review panel, the insurer shall also provide a written explanation of the insurer's determination on request to the affected physician. On request, an expedited review process shall be made available to a physician whose participation is being terminated. The expedited review process must comply with rules established by the commissioner.

(l) An insurer that conducts, uses, or relies on economic profiling to admit or terminate physicians or health care providers from a preferred provider benefit plan shall make available to a physician or health care provider on request the economic profile of that physician or health care provider, including the written criteria by which the physician or health care provider's performance is to be measured. An economic profile must be adjusted to recognize the characteristics of a physician's or health care provider's practice that may account for variations from expected costs.

(m) An insurer may not engage in quality assessment except through a panel of at least three physicians selected by the insurer from among a list of physicians contracting with the insurer. The physicians who contract with the insurer in the applicable service area shall provide the insurer with the list.

(n) A preferred provider contract may not require any health care provider, physician, or physicians group to execute hold-harmless clauses in order to shift, from the insurer to the preferred provider, tort liability resulting from acts or omissions of the insurer.

(o) A preferred provider contract must include a provision by which the physician or health care provider agrees that if the preferred provider is compensated on a discounted fee basis, the insured may be billed only on the discounted fee and not on the full charge.

(p) An insurer may enter into an agreement with a preferred provider organization for the purpose of offering a network of preferred providers. The agreement may provide that the notice requirements and other requirements imposed on insurers under this article may be complied with by either the insurer or the preferred provider organization on the insurer's behalf. If an insurer enters into an agreement with a preferred provider organization under this subsection, it is the responsibility of the insurer to meet the requirements of this article or to ensure that those requirements are met. Each preferred provider benefit plan offered in this state shall comply with the requirements of this article.

(q) An insurer shall comply with Article 21.55 of this code with respect to prompt payment of insureds. A preferred provider contract must include a provision for payment to the physician or health care provider for covered services that are rendered to insureds under the contract not later than the 45th day after the date on which a claim for payment is received with the documentation reasonably necessary to process the claim, or within the period, not to exceed 60 days, that is specified by written agreement between the physician or health care provider and the insurer. For purposes of this subsection, "covered services" means health care services and benefits to which an insured is entitled under the terms of the contract.

(r) For purposes of this section, "termination" includes the deselection of a physician or provider from a preferred provider organization or the failure or refusal of a preferred provider organization to renew a contract entered into with a physician or provider.

Sec. 4. CONTINUITY OF CARE. (a) The insurer shall establish reasonable procedures for ensuring a transition of insureds to physicians or health care providers and for continuity of treatment. Insurers shall provide, subject to Sections 6(e)-(g) of this article, reasonable advance notice to the insured of the impending termination from the plan of a physician or health care provider who is currently treating the insured and, if a preferred provider's participation in the plan is terminated, shall make available to the insured a current listing of preferred providers.

(b) Each contract between an insurer and a physician or health care provider must provide that the termination of a preferred provider's participation in the plan, except for a reason of medical competence or professional behavior, does not release:

(1) the physician or health care provider from the generally recognized obligation to treat the insured and to cooperate in arranging for appropriate referrals; or

(2) the insurer from the obligation to reimburse the physician or health care provider or, if applicable, the insured at the same preferred provider rate if, at the time of the preferred provider's termination, the insured has special circumstances such as a disability, acute condition, or life-threatening illness or is past the 24th week of pregnancy and is receiving treatment in accordance with the dictates of medical prudence.

(c) For purposes of Subsection (b) of this section, "special circumstances" means a condition for which the treating physician or health care provider reasonably believes that discontinuing care by the treating physician or provider could cause harm to the patient. Special circumstances shall be identified by the treating physician or health care provider, who must request that the insured be permitted to continue treatment under the physician's or provider's care and must agree not to seek payment from the insured of any amounts for which the insured would not be responsible if the physician or provider were still a preferred provider.

(d) Each contract between an insurer and physicians and health care providers must include procedures for resolving disputes regarding the necessity for continued treatment by a physician or provider.

(e) This section does not extend the obligation of the insurer to reimburse, at the preferred provider level of coverage, the terminated physician or health care provider or, if applicable, the insured for ongoing treatment of an insured after the 91st day after the effective date of the termination. However, the obligation of the insurer to reimburse, at the preferred provider level of coverage, the terminated physician or health care provider or, if applicable, an insured who, at the time of the termination:

(1) is past the 24th week of pregnancy extends through delivery of the child, immediate postpartum care, and the follow-up checkup within the first six weeks of delivery; or

(2) is being treated for a life-threatening illness or condition extends through the completion of the treatment if the physician or health care provider agrees to the provisions established under this section.

Sec. 5. EMERGENCY CARE PROVISIONS. If the insured cannot reasonably reach a preferred provider, the insurer shall provide reimbursement for the following emergency care services at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider:

(1) any medical screening examination or other evaluation required by state or federal law to be provided in the emergency facility of a hospital that is necessary to determine whether a medical emergency condition exists;

(2) necessary emergency care services, including the treatment and stabilization of an emergency medical condition; and

(3) services originating in a hospital emergency facility following treatment or stabilization of an emergency medical condition.

Sec. 6. MANDATORY DISCLOSURE REQUIREMENTS. (a) Each health insurance policy, health benefit plan certificate, endorsement, amendment, application, or rider subject to this article must:

(1) be written in plain language;

(2) be in a readable and understandable format; and

(3) comply with all applicable requirements relating to minimum readability requirements.

(b) The insurer, on request, shall provide to a current or prospective group contract holder or current or prospective insured an accurate written description of the terms and conditions of the policy to allow the current or prospective group contract holder or current or prospective insured to make comparisons and informed decisions before selecting among health care plans. The written description must be in a readable and understandable format as prescribed by the commissioner and must include a current list of preferred providers. The insurer may provide a handbook published by the insurer to satisfy the requirement adopted under this subsection if the content of the handbook is substantively similar to and achieves the same level of disclosure as the written description prescribed by the commissioner and includes the current list of physicians and health care providers.

(c) Each insurer shall provide to its insureds a current list of preferred providers at least annually.

(d) An insurer, or an agent or representative of an insurer, may not cause or permit the use of, or distribution to a prospective insured of, information that is untrue or misleading.

(e) If participation of a physician or practitioner is terminated for reasons other than the preferred provider's request, an insurer that has complied with the requirements adopted under Section 3(j) of this article may give reasonable advance notice to an insured of the impending termination from the plan of a physician or provider who is currently treating the insured.

(f) If a physician or provider voluntarily terminates the physician's or provider's relationship with an insurer, the physician or provider shall provide reasonable notice to insureds under the physician's or provider's care. The insurer shall provide assistance to the physician or provider in ensuring that the notice requirements of this subsection are met.

(g) If participation of a physician or practitioner is terminated for reasons related to imminent harm, an insurer may notify insureds immediately.

Sec. 7. PROHIBITED PRACTICES. (a) An insurer may not engage in any retaliatory action against an insured, including the cancellation of or refusal to renew a policy because the insured, or a person acting on behalf of the insured, has filed a complaint against the insurer or against a preferred provider or has appealed a decision of the insurer.

(b) An insurer may not engage in any retaliatory action against a physician or health care provider, including termination of or refusal to renew a contract, because the physician or provider has, on behalf of an insured, reasonably filed a complaint against the insurer or has appealed a decision of the insurer.

(c) An insurer may not, as a condition of a contract with a physician or health care provider or in any other manner, prohibit, attempt to prohibit, or discourage a physician or provider from:

(1) discussing with or communicating to a current, prospective, or former patient, or a party designated by a patient, information or opinions regarding that patient's health care, including the patient's medical condition or treatment options; or

(2) discussing with or communicating in good faith to a current, prospective, or former patient, or a party designated by a patient, information or opinions regarding the provisions, terms, requirements, or services of the health care plan as they relate to the medical needs of the patient.

(d) An insurer may not in any way penalize, terminate, or refuse to compensate for covered services a physician or provider because the physician or provider has communicated with a current, prospective, or former patient, or a party designated by a patient, in a manner protected by this section.

(e) An insurer may not:

(1) require, as a condition of coverage or for any other reason:

(A) the observation of a psychotherapy session relating to or involving an insured; or

(B) that a practitioner's process or progress notes be submitted to the insurer for review; or

(2) deny benefits for psychotherapy on the grounds that the patient refuses medication:

(A) based on the patient's religious beliefs; or

(B) for a period beyond the contract limits related to outpatient visits.

Sec. 8. AVAILABILITY OF PREFERRED PROVIDERS. (a) Any insurer offering a preferred provider benefit plan must ensure that both preferred provider benefits and basic level benefits are reasonably available to all insureds within the designated service area.

(b) If services are not available through preferred providers within the service area, nonpreferred providers shall be reimbursed at the same percentage level of reimbursement as the preferred providers would have been reimbursed had the insured been treated by preferred providers. This

subsection does not require reimbursement at a preferred level of coverage solely because an insured resides out of the service area and chooses to receive services from providers other than preferred providers for the insured's own convenience.

Sec. 9. RULEMAKING AUTHORITY. The commissioner may adopt rules and standards as necessary to implement the provisions of this article, including:

(1) rules prohibiting the use of financial incentives or payments to a physician or provider that act directly or indirectly as an inducement to limit medically necessary services; and

(2) standards to ensure reasonable accessibility and availability of preferred provider and basic level benefits to Texas citizens.

SECTION 2. The requirements of Article 3.70-3C, Insurance Code, as added by this Act, apply only to an insurance policy or contract issued, delivered, or renewed on or after the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 383** as follows:

(1) In SECTION 1 of the bill, in Section 7(e)(2)(B), Article 3.70-3C, Insurance Code (page 15, line 10, corrected house committee report printing), strike "or".

(2) In SECTION 1 of the bill, in Section 7(e)(2)(B), Article 3.70-3C, Insurance Code (page 15, line 15, corrected house committee report printing), strike "outpatient visits." and substitute "outpatient visits; or".

(3) In SECTION 1 of the bill, in Section 7(e), Article 3.70-3C, Insurance Code (page 15, between lines 15 and 16, corrected house committee report printing), insert a new Subdivision (3) to read as follows:

"(3) deny benefits for mental health therapy on the grounds that the therapy is provided in a group session with family members or other individuals.".

Floor Amendment No. 2

Amend **CSSB 383** in Section 7, Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 15, between lines 15 and 16, house committee printing), by inserting Subsection (f) to read as follows:

(f) An insurer or preferred provider that uses a drug formulary in providing a prescription drug benefit shall provide the benefit to an insured for a drug not included in the formulary if:

(1) the drug not included in the formulary is in a class of drugs covered under the prescription drug benefit;

(2) a physician treating the insured under the preferred provider benefit plan determines that prescription of the drug not included in the

formulary, rather than a drug included in the formulary, is in the best interest of the insured; and

(3) the enrollee pays the difference between the costs of the drugs, if the drug that is not included in the formulary is more expensive than the drug that is include in the formulary.

Amendment No. 3

Amend **CSSB 383** on page 13, line 7, between "to" and "and", insert ", allows accurate comparisons to other plans,".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 383** on third reading as follows:

(1) In Section 3(c), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 5, line 14, corrected house committee report printing), in the first sentence, between "physician" and "designation", insert "or practitioner".

(2) In Section 3(c), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 5, line 18, corrected house committee report printing), in the second sentence, strike "physician." and substitute "physician or practitioner."

(3) In Section 3(c), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 5, line 21, corrected house committee report printing), in the third sentence, strike "physician." and substitute "physician or practitioner."

(4) In Section 3(d), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 5, line 24, corrected house committee report printing), in the first sentence, between "physicians" and "contracting", insert "or practitioners".

(5) In Section 3(d), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill, (page 5, line 25, corrected house committee report printing), in the first sentence, strike "who is a physician in the same speciality as the affected physician" and substitute "who is a physician or practitioner in the same speciality as the affected physician or practitioner".

(6) In Section 3(d), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 5, line 26, corrected house committee report printing), in the second sentence, between "physicians" and "contracting", insert "or practitioners".

(7) In Section 3(d), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 6, line 1, corrected house committee report printing), in the second sentence, strike "physicians." and substitute "physicians or practitioners."

(8) In Section 3(i), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 7, lines 6-8, corrected house committee report printing), in the first sentence, strike "physician or a physicians group must include a mechanism for the resolution of complaints initiated by an insured, physician, or physicians group." and substitute "physician, physicians group, or practitioner must include a mechanism for the resolution of complaints initiated by an insured, physician, physicians group, or practitioner."

(9) In Section 3(j), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 7, lines 12-14, corrected house committee report printing), strike "physician, the insurer shall provide written reasons for the termination. Before termination of the contract with a physician," and substitute "preferred provider, the insurer shall provide written reasons for the termination. Before termination of the contract with a physician or practitioner,".

(10) In Section 3(j)(2), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 7, line 22, corrected house committee report printing), strike "a physician's ability to practice medicine;" and substitute "a physician's or practitioner's ability to practice medicine or provide health care;".

(11) In Section 3(k), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 7, line 25, corrected house committee report printing), in the first sentence, strike "physician." and substitute "physician or practitioner."

(12) In Section 3(k), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 8, line 1, corrected house committee report printing), in the second sentence, strike "physician." and substitute "physician or practitioner."

(13) In Section 3(k), Article 3.70-3C, Insurance Code, as added by SECTION 1 of the bill (page 8, line 2, corrected house committee report printing), in the third sentence, strike "physician" and substitute "physician or practitioner".

The amendments were read.

Senator Cain moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 383** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Nelson, Madla, Sibley, and Harris.

SENATE BILL 384 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 384** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 384** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to utilization review under health benefit plans and health insurance policies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Article 21.58A, Insurance Code, is amended to read as follows:

Sec. 2. DEFINITIONS. In this article:

(1) "Administrative procedure act" means Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(2) "Administrator" means a person holding a certificate of authority under Article 21.07-6 of this code.

(3) "Adverse determination" means a determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary or not appropriate in the allocation of health care resources.

(4) [~~"Board" means the State Board of Insurance.~~

[~~(5)~~] "Certificate" means a certificate of registration granted by the commissioner [~~board~~] to a utilization review agent.

(5) [~~(6)~~] "Commissioner" means the commissioner of insurance.

(6) [~~(7)~~] "Emergency care" means health care services provided in a hospitl emergency facility or comparable facility to evaluate and stabilize medical conditions of recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the fetus [~~bona fide emergency services as defined in Section 2(t), Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-2, Vernon's Texas Insurance Code) and Section 2(t), Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code)~~].

(7) [~~(8)~~] "Dental plan" means an insurance policy or health benefit plan, including a policy written by a company subject to Chapter 20 of this code, that provides coverage for expenses for dental services.

(8) [~~(9)~~] "Enrollee" means a person covered by a health insurance policy or plan and includes a person who is covered as an eligible dependent of another person.

(9) [~~(10)~~] "Health benefit plan" means a plan of benefits that defines the coverage provisions for health care for enrollees offered or provided by any organization, public or private, other than health insurance. The term does not include a plan that provides coverage only for a specified accident or disease or a hospital indemnity, Medicare supplement, long-term care, or other limited health insurance policy.

(10) [~~(11)~~] "Health care provider" means any person, corporation, facility, or institution licensed by a state to provide or otherwise lawfully providing health care services that is eligible for independent reimbursement for those services.

(11) [~~(12)~~] "Health insurance policy" means an insurance policy, including a policy written by a company subject to Chapter 20 of this code, that provides coverage for medical or surgical expenses incurred as a result of accident or sickness.

(12) "Life-threatening condition" means a condition from which the likelihood of death is high unless the course of the disease or condition is interrupted.

(13) "Nurse" means a professional or registered nurse, a licensed vocational nurse, or a licensed practical nurse.

(14) "Open meetings law" means Chapter 551, Government Code [~~271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes)~~].

(15) "Open records law" means Chapter 552, Government Code [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)~~].

(16) "Patient" means the enrollee or an eligible dependent of the enrollee under a health benefit plan or health insurance plan.

(17) "Payor" means:

(A) an insurer writing health insurance policies;

(B) any preferred provider organization, health maintenance organization, self-insurance plan; or

(C) any other person or entity which provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to persons treated by a health care provider in this state pursuant to any policy, plan, or contract.

(18) "Physician" means a licensed doctor of medicine or a doctor of osteopathy.

(19) "Provider of record" means the physician or other health care provider that has primary responsibility for the care, treatment, and services rendered to the enrollee and includes any health care facility when treatment is rendered on an inpatient or outpatient basis.

(20) "Utilization review" means a system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Utilization review shall not include elective requests for clarification of coverage.

(21) "Utilization review agent" means an entity that conducts utilization review for:

(A) an employer with employees in this state who are covered under a health benefit plan or health insurance policy;

(B) a payor; or

(C) an administrator.

(22) "Utilization review plan" means the screening criteria and utilization review procedures of a utilization review agent.

(23) "Working day" means a weekday, excluding a legal holiday.

SECTION 2. Sections 3(b), (d), (e), and (f), Article 21.58A, Insurance Code, are amended to read as follows:

(b) The commissioner may only issue a certificate to an applicant that has met all the requirements of this article and all applicable rules and regulations of the commissioner [~~board~~].

(d) Certification may be renewed biennially by filing, not later than March 1, a renewal form with the commissioner accompanied by a renewal fee in an amount set by the commissioner [~~board~~].

(e) The commissioner shall promulgate certification and renewal forms to be filed under this section. The form for initial certification must require the following:

(1) the entity's name, address, telephone number, and normal business hours;

(2) the name and address of an agent for service of process in this state;

(3) a summary of the utilization review plan, but in no event shall proprietary details be subject to inclusion in the summary;

(4) information concerning the personnel categories that will perform utilization review for the utilization review agent;

(5) a copy of the procedure established by the utilization review agent as required by this article for appeal of an adverse determination;

(6) a certification that the utilization review agent will comply with the provisions of this article; and

(7) a copy of the procedures for handling oral and written complaints by enrollees, patients, or health care providers.

(f) The commissioner [~~board~~] shall establish, administer, and enforce the certification and renewal fees under this section in amounts not greater than that necessary to cover the cost of administration of this article.

SECTION 3. Sections 4(c), (h), (i), (k), (m), and (n), Article 21.58A, Insurance Code, are amended to read as follows:

(c) Personnel employed by or under contract with the utilization review agent to perform utilization review shall be appropriately trained and qualified. Personnel who obtain information regarding a patient's specific medical condition, diagnosis, and treatment options or protocols directly from the physician or health care provider, either orally or in writing, and who are not physicians shall be nurses or[;] physician assistants or mental health providers qualified to provide the service requested by the provider [~~; registered records administrators, or accredited records technicians, who are either licensed or certified, or shall be individuals who have received formal orientation and training in accordance with policies and procedures established by the utilization review agent to assure compliance with this section, and a description of such policies and procedures shall be filed with the commissioner~~]. This provision shall not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(h) Utilization review conducted by a utilization review agent shall be under the direction of a physician licensed to practice medicine in this state [~~by a state licensing agency in the United States~~].

(i) Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established

and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers. Utilization review decisions shall be made in accordance with currently accepted medical, mental health, or health or mental health care practices, taking into account special circumstances of each case that may require deviation from the norm stated in the screening criteria. Screening criteria must be objective, clinically valid, compatible with established principles of health or mental health care, and flexible enough to allow deviations from the norms when justified on a case-by-case basis. Screening criteria must be used to determine only whether to approve the requested treatment. Denials must be referred to an appropriate physician, dentist, or other health or mental health care provider to determine medical necessity. Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner and copying as necessary for the commissioner to carry out his or her lawful duties under this code, provided, however, that any information obtained or acquired under the authority of this subsection and article is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the [~~board or~~] commissioner to enforce this article.

(k) Subject to the notice requirements of Section 5 of this article, in any instance where the utilization review agent is questioning the medical necessity or appropriateness of health care services, the health care provider who ordered the services shall be afforded a reasonable opportunity to discuss the plan of treatment for the patient and the clinical basis for the utilization review agent's decision with a physician [~~or, in the case of a dental plan with a dentist,~~] prior to issuance of an adverse determination.

(m) A utilization review agent shall establish and maintain a complaint system that provides reasonable procedures for the resolution of oral or written complaints initiated by enrollees, patients, or health care providers concerning the utilization review and shall maintain records of the [~~such written~~] complaints for three [~~two~~] years from the time the complaints are filed. The complaint procedure shall include a written response to the complainant by the agent within 30 [~~60~~] days. The utilization review agent shall submit to the commissioner a summary report of all complaints at such times and in such forms as the commissioner [~~board~~] may require and shall permit the commissioner to examine the complaints and all relevant documents at any time.

(n) The utilization review agent may delegate utilization review to qualified personnel in the hospital or health care facility where the health care services were or are to be provided. Delegation does not relieve the utilization review agent of full responsibility for compliance with this article, including responsibility for the conduct of those to whom utilization review has been delegated.

SECTION 4. Sections 5(c) and (d), Article 21.58A, Insurance Code, are amended to read as follows:

(c) In the event of an adverse determination, the notification by the utilization review agent must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;

(3) a description or the source of the screening criteria that were utilized as guidelines in making the determination; and

(4) [~~(3)~~] a description of the procedure for complaint and appeal.

(d) The notification of adverse determination required by this section shall be provided by the utilization review agent:

(1) within one working day by telephone or electronic transmission to the provider of record in the case of a patient who is hospitalized at the time of the adverse determination, to be followed within three working days by a letter notifying the patient and the provider of record of an adverse determination; [~~or~~]

(2) within three working days in writing to the provider of record and the patient if the patient is not hospitalized at the time of the adverse determination; or

(3) within a time period appropriate to the circumstances of the service delivery and the patient's condition, not to exceed one hour when the adverse determination relates to poststabilization care after emergency treatment requested by a treating physician or provider, under which circumstances notification shall be provided to the treating physician or health care provider.

SECTION 5. Section 6, Article 21.58A, Insurance Code, is amended to read as follows:

Sec. 6. APPEAL OF ADVERSE DETERMINATIONS OF UTILIZATION REVIEW AGENTS. (a) A utilization review agent shall maintain and make available a written description of procedures for [~~an~~] appeal [~~procedure~~] of an adverse determination.

(b) The procedures for appeals shall be reasonable and shall include the following:

(1) a provision that an enrollee, a person acting on behalf of the enrollee, or the enrollee's physician or health care provider may appeal the adverse determination orally or in writing [~~and shall be provided, on request, a clear and concise statement of the clinical basis for the adverse determination~~];

(2) a provision that, within five working days from receipt of the appeal, the utilization review agent shall send to the appealing party a letter acknowledging the date of the utilization review agent's receipt of the appeal and including a reasonable list of documents needed to be submitted by the appealing party to the utilization review agent for the appeal and information about the appeal requirements of this subsection, unless the utilization review agent receives an oral appeal of adverse determination, in which case the utilization review agent shall send a one-page appeal form to the appealing party;

(3) a provision that appeal decisions shall be made by a physician, provided that, if the appeal is denied and within 10 working days the health care provider sets forth in writing good cause for having a particular type of a specialty provider review the case, the denial shall be reviewed by a health care provider in the same or similar specialty as typically manages the

medical, dental, mental health, or specialty condition, procedure, or treatment under discussion for review of the adverse determination, and that the specialty review shall be completed within 15 working days of receipt of the request;

(4) in addition to the written appeal, [~~a method for~~] an expedited appeal procedure for emergency care denials, denials of care for life-threatening conditions, and denials of continued stays for hospitalized patients that [~~, which~~] shall include a review by a health care provider who has not previously reviewed the case and who is of the same or a similar specialty as a health care provider who typically manages the medical condition, procedure, or treatment under review [~~; such appeal must be~~] completed in a period based on the medical or dental immediacy of the condition, procedure, or treatment not to exceed one working day from the date [~~no later than one working day following the day on which the appeal~~, ~~including~~] all information necessary to complete the appeal[;] is received [~~made to the utilization review agent~~]; [~~and~~]

(5) a provision that after the utilization review agent has sought review of the appeal of the adverse determination, the utilization review agent shall issue a response letter to the patient, a person acting on behalf of the patient, or the patient's physician or health care provider explaining the resolution of the appeal and including a statement of the specific medical, dental, or contractual reasons for the resolution, the clinical basis for the decision, and the specialization of any physician or other provider consulted; and

(6) written notification to the appealing party of the determination of the appeal, as soon as practical, but in no case later than 30 days after the date the utilization review agent receives the appeal [~~receiving all the required documentation of the appeal. If the appeal is denied, the written notification shall include the clinical basis for the appeal's denial and the specialty of the physician making the denial~~].

SECTION 6. Section 7, Article 21.58A, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A utilization review agent must provide to the commissioner a written description of the procedures to be used when responding to poststabilization care after emergency treatment requested by a treating physician or health care provider.

SECTION 7. Section 8, Article 21.58A, Insurance Code, is amended to read as follows:

Sec. 8. CONFIDENTIALITY. (a) A utilization review agent shall preserve the confidentiality of individual medical records to the extent required by law.

(b) A utilization review agent may not disclose or publish individual medical records, personal information, or other confidential information about a patient obtained in the performance of utilization review without the prior written consent of the patient or as otherwise required by law. If the authorization is submitted by a person other than the individual who is the subject of the personal or confidential information requested, the authorization must be:

(1) dated; and

(2) signed by the individual who is the subject of the personal or confidential information requested not later than one year before the date the disclosure is sought.

(c) A utilization review agent may provide confidential information to a third party under contract or affiliated with the utilization review agent for the sole purpose of performing or assisting with utilization review. Information provided to third parties shall remain confidential.

(d) If an individual submits a written request to the utilization review agent for access to recorded personal information about the individual, the utilization review agent shall not later than the 10th business day after the date the request is received:

(1) give written notice to the individual submitting the request of the nature and substance of the recorded personal information; and

(2) permit the individual to see and personally copy the recorded personal information pertaining to the individual or to obtain a copy of the recorded personal information by mail, at the discretion of the individual, unless the recorded personal information is in coded form, in which case the agent shall provide an accurate written translation in plain language.

(e) A utilization review agent's charges for providing a copy of recorded personal information to individuals shall be reasonable, as determined by rule of the commissioner, and may not include any costs that are otherwise recouped as part of the charge for utilization review.

(f) [~~(c)~~] The utilization review agent may not publish data which identifies a particular physician or health care provider, including any quality review studies or performance tracking data, without prior written notice to the involved provider. This prohibition does not apply to internal systems or reports used by the utilization review agent.

(g) [~~(d)~~] Documents in the custody of the utilization review agent that contain confidential patient information or physician or health care provider financial data shall be destroyed by a method which induces complete destruction of the information when the agent determines the information is no longer needed.

(h) [~~(e)~~] All patient, physician, and health care provider data shall be maintained by the utilization review agent in a confidential manner which prevents unauthorized disclosure to third parties. Nothing in this article shall be construed to allow a utilization review agent to take actions that violate a state or federal statute or regulation concerning confidentiality of patient records.

(i) Notwithstanding the provisions in Subsections (a) through (h) of this section, the utilization review agent shall provide to the commissioner on request individual medical records or other confidential information for determination of compliance with this article. The information is confidential and privileged and is not subject to the open records law or to subpoena, except to the extent necessary for the commissioner to enforce this article.

(j) Notwithstanding any other provision of this article, a utilization review agent may not require as a condition of treatment approval or for any other reason the observation of a psychotherapy session or the submission or review of a mental health therapist's process or progress notes.

SECTION 8. Sections 9(a), (b), and (d), Article 21.58A, Insurance Code, are amended to read as follows:

(a) If the commissioner believes that any person or entity conducting utilization review pursuant to this article is in violation of [~~a utilization review agent has violated or is violating~~] this article or applicable regulations, the commissioner shall notify the utilization review agent, health maintenance organization, insurer, or other person or entity of the alleged violation and may compel the production of any and all documents or other information as necessary in order to determine whether or not such violation has taken place [~~provided by this code~~].

(b) The commissioner may initiate [~~the~~] proceedings under this section [~~after the 30th day after the date the commissioner notifies the agent as required by Subsection (a) of this section~~].

(d) If [~~after notice and hearing~~] the commissioner determines that the utilization review agent, health maintenance organization, insurer, or other person or entity conducting utilization review under this article has violated or is violating any provision of this article, the commissioner may:

(1) impose sanctions under Section 7, Article 1.10 of this code; [~~or~~]

(2) issue a cease and desist order under Article 1.10A of this code; or

(3) assess administrative penalties under Article 1.10E of this code.

SECTION 9. Section 13, Article 21.58A, Insurance Code, is amended to read as follows:

Sec. 13. AUTHORITY TO ADOPT RULES. The commissioner may [~~board shall have the authority to~~] adopt rules [~~and regulations~~] to implement the provisions of this article. The commissioner [~~board~~] shall appoint an [~~11-member~~] advisory committee to advise the commissioner [~~board~~] in developing rules [~~and regulations~~] to administer this article as authorized by Section 2001.031, Government Code. The committee's deliberations shall be subject to the open meetings law. The committee shall include the public counsel and one representative for each of the following: insurance companies, health maintenance organizations, group hospital service corporations, utilization review agents, employers, physicians, dentists, hospitals, registered nurses, and other health care providers.

SECTION 10. Section 14, Article 21.58A, Insurance Code, is amended by amending Subsections (e), (g), and (h) and adding Subsection (j) to read as follows:

(e) This article shall not apply to the terms or benefits of employee welfare benefit plans as defined in Section 3(1) [~~31(1)~~] of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1) [~~1002~~]).

(g) A health maintenance organization is not subject to this article except as expressly provided in this subsection and Subsection (i) of this section. If such health maintenance organization performs utilization review as defined herein, it shall, as a condition of licensure:

(1) comply with Sections 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14 [~~4(b), (c), (c), (f), (h), (i), and (l)~~] of this article, and the commissioner [~~board~~] shall promulgate rules for appropriate verification and enforcement of compliance. However, nothing in this article shall be construed to prohibit or limit the distribution of a proportion of the savings from the reduction or elimination of

unnecessary medical services, treatment, supplies, confinements, or days of confinement in a health care facility through profit sharing, bonus, or withhold arrangements to participating physicians or participating health care providers for rendering health care services to enrollees; and

(2) [~~establish and maintain a system for:~~

[~~(A) handling and responding to complaints by enrollees, patients, or health care providers;~~

[~~(B) providing health care providers with notice of medical necessity or program requirements that have not been met, including a reasonable opportunity to discuss the plan of treatment and clinical basis for a utilization review determination with a physician; and~~

[~~(C) providing the enrollee, patient, and health care provider an opportunity to appeal the determination; and~~

[~~(3)~~] submit to assessment of maintenance taxes under Article 20A.33, Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), to cover the costs of administering compliance of health maintenance organizations under this section.

(h) An insurer which delivers or issues for delivery a health insurance policy in Texas and is subject to this code is not subject to this article except as expressly provided in this subsection and Subsection (i) of this section. If an insurer performs utilization review as defined herein it shall, as a condition of licensure, comply with Sections 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14 [~~4 through 8~~] of this article, and the commissioner [~~board~~] shall promulgate rules for appropriate verification and enforcement of compliance. Such insurers shall be subject to assessment of maintenance tax under Article 4.17 of this code to cover the costs of administering compliance of insurers under this section.

(j) A specialty utilization review agent is not subject to Section 4(b), (c), (h), or (k) or Section 6(b)(3) of this article. For purposes of this subsection, a specialty utilization review agent is a utilization review agent who conducts utilization review for specialty health care services, including dentistry, chiropractic, or physical therapy. A specialty utilization review agent shall comply with the following requirements:

(1) the utilization review plan, including reconsideration and appeal requirements, shall be reviewed by a health care provider of the appropriate specialty and conducted in accordance with standards developed with input from a health care provider of the appropriate specialty;

(2) personnel employed by or under contract with a specialty utilization review agent to perform utilization review shall be appropriately trained and qualified; personnel who obtain information directly from the physician or health care provider, either orally or in writing, shall be nurses, physician assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care service by a state licensing agency in the United States, except that this provision does not require those qualifications for personnel who perform solely clerical or administrative tasks;

(3) utilization review conducted by a specialty utilization review agent shall be conducted under the direction of a health care provider of the

same specialty and shall be licensed or otherwise authorized to provide the specialty health care service by a state licensing agency in the United States;

(4) subject to the notice requirements of Section 5 of this article, in any instance where the specialty utilization review agent questions the medical necessity or appropriateness of health care services, the health care provider who ordered the services shall, before the issuance of an adverse determination, be afforded a reasonable opportunity to discuss the plan of treatment for the patient and the clinical basis for the decision of the utilization review agent with a health care provider of the same specialty as the utilization review agent; and

(5) appeal decisions shall be made by a physician or health care provider in the same or a similar specialty as typically manages the medical, dental, or specialty condition, procedure, or treatment under discussion for review of the adverse determination.

SECTION 11. This Act takes effect September 1, 1997, and applies to an act of utilization review that is performed on or after that date. An act of utilization review that is performed before that date is governed by the law in effect on the date the act was performed, and the former law is continued in effect for that purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend **CSSB 384**, page 1, by striking line 16 and placing the period after the word "necessary".

Removes the words pertaining to rationing of health care — "or is appropriate in the allocation of health care resources."

Amendment No. 2

Amend SECTION 5 of **CSSB 384** on page ____, line ____, by striking Section 6(b)(4) and substituting the following:

"(4) in addition to the written appeal, an expedited appeal procedure for emergency care denials, denials of care for life threatening conditions, and denials of continued stays for hospitalized patients that shall include a review by a health care provider who has not previously reviewed the case and who is of the same or similar speciality as a health care provider who typically manages the medical condition, procedure, or treatment under review completed in a period based on the medical or dental immediacy of the condition, procedure, or treatment, not to exceed one working day from the date all information necessary to complete the appeal is received, but may in no event exceed seven working days from the date following the day on which the appeal in received;".

Floor Amendment No. 3

Amend **CSSB 384** as follows:

(1) Add the following appropriately numbered section to the bill and renumber existing sections of the bill appropriately:

SECTION ____. Section 14(b)(2), Article 21.58A, Insurance Code, is amended to read as follows:

(2) Except as provided by Subsection (g) of this section, this [~~This~~] article shall not apply to the Texas Medicaid Program, the chronically ill and disabled children's services program created pursuant to Chapter 35, Health and Safety Code, any program administered under Title 2, Human Resources Code, any program of the Texas Department of Mental Health and Mental Retardation, or any program of the Texas Department of Criminal Justice.

(2) In SECTION 10 of the bill, in the first sentence of Subsection (g), Section 14, Article 21.58A, Insurance Code, as amended, between "organization" and "is" (page 17, line 10, House Committee Printing), insert ", including a health maintenance organization that contracts with the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program to provide health care services to recipients of medical assistance under Chapter 32, Human Resources Code,".

Floor Amendment No. 1 on Third Reading

Amend SECTION 10 of **CSSB 384** on third reading as follows:

On page 17, line 10, amend subsection (g) by deleting the word "not".

On page 17, lines 15 and 16, amend paragraph (1) of subsection (g) by deleting the words "Sections 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14 of".

On page 17, line 17, amend paragraph (1) of subsection (g), bya adding after "," and before "and" the following: "except Sections 3 and 10.".

On page 18, line 15, amend subsection (h) by deleting the word "not".

On page 18, lines 19 and 20, amend subsection (h) by deleting the words "Sections 1, 2, 4, 5, 6, 7, 8, 9, 11, 12,13, and 14 of".

On page 18, line 20, amend subsection (h) by adding after "," and before "and" the following: "except Sections 3 and 10.".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 384**, on third reading, in SECTION 9 of the bill, in amended Section 13, Article 21.58A, Insurance Code (House Committee Printing, page 17, line 1), between "employers," and "physicians", by inserting "consumer organizations,".

The amendments were read.

Senator Nelson moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 384** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Cain, Harris, Madla, and Sibley.

SENATE BILL 1581 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1581** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1581** as follows:

(1) In SECTION 1 of the bill (committee report, page 1, lines 4-6), strike "; SHORT TITLE. (a) Except as provided by this Act, this Act applies to all charitable organizations that engage in telephone solicitation in this state.".

(2) In SECTION 1 of the bill (committee report, page 1, lines 10-11), strike Subsection (b).

(3) Strike SECTIONS 2-5 of the bill (committee report, page 1, line 12, through page 4, line 6).

(4) In SECTION 6 of the bill, in Subsection (a) (committee report, page 4, line 8), between "that" and "submit", insert "voluntarily".

(5) In SECTION 6 of the bill, in Subsection (b) (committee report, page 7, line 9), between "charitable organization" and "shall", insert "that registers with the attorney general".

(6) Strike SECTION 7 of the bill (committee report, page 8, lines 2-13).

(7) In SECTION 8 of the bill, in Subsection (a) (committee report, page 8, line 15), strike "required to file" and substitute "that files".

(8) In SECTION 8 of the bill, in Subsection (a) (committee report, page 8, line 18), strike "required by this Act" and substitute "filed with the attorney general".

(9) Strike SECTIONS 9-15 of the bill (committee report, page 9, line 8, through page 11, line 10).

(10) Renumber the SECTIONS of the bill.

Floor Amendment No. 1 on Third Reading

Amend on third reading **SB 1581**, as amended on second reading, as follows:

(1) In the section of the bill entitled REGISTRATION, in Subsection (a), strike "voluntarily".

(2) In the section of the bill entitled REGISTRATION, in Subsection (b), strike "that registers with the attorney general".

(3) In the section of the bill entitled REGISTRATION, add Subsection (f) to read as follows:

(f) A volunteer that has been authorized to solicit on behalf of a charitable organization is not required to register under this Act.

(4) In the section of the bill entitled RECORDKEEPING; AUDIT POWERS OF ATTORNEY GENERAL, in Subsection (a), strike "that files" and substitute "required to file".

(5) In the section of the bill entitled RECORDKEEPING; AUDIT POWERS OF ATTORNEY GENERAL, in Subsection (a), strike "filed with the attorney general" and substitute "required by this Act".

(6) Insert the following appropriately numbered sections:

SECTION ___. DEFINITIONS. In this Act:

(1) "Charitable organization" means a person, other than a governmental law enforcement agency or organization, who solicits contributions or funds and is or holds himself, herself, or itself out to be established or operating for a charitable purpose relating to law enforcement, including nongovernmental law enforcement organizations, nongovernmental law enforcement publications, and survivors of law enforcement officers who are killed in the line of duty.

(2) "Commercial telephone solicitor" means a person who is retained by a charitable organization to solicit contributions or funds by telephone, whether done individually or through another person under the direction of the commercial telephone solicitor. The term does not include a bona fide employee, officer, director, or volunteer of a charitable organization.

(3) "Contribution" means the promise to give or the gift of money, credit, property, financial assistance, or other thing of any kind or value, except volunteer services. The term does not include bona fide fees, dues, or assessments paid by members if membership is not conferred solely as consideration for making a contribution in response to a telephone solicitation.

(4) "Knowingly" means with actual awareness, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(5) "Person" means an individual, partnership, corporation, association, or other legal entity.

(6) "Telephone solicitation" means the use of a telephone to solicit another person to make a charitable contribution to an organization.

SECTION ___. REGISTER TO BE MAINTAINED. (a) The attorney general shall establish and maintain a register of charitable organizations subject to this Act.

(b) All documents required to be filed with the attorney general under this Act are public information and shall be available to the public under the open records law, Chapter 552, Government Code, except those documents that identify the donors of a charitable organization, which information is confidential and is not subject to disclosure.

SECTION ___. BOND. A commercial telephone solicitor shall post a surety bond with the secretary of state in the amount of $50,000 issued by a surety company authorized to do business in this state.

SECTION ___. NOTIFICATION OF NONCOMPLIANCE. (a) A charitable organization that is not in compliance with this Act shall be notified of noncompliance by the attorney general by first class mail at the organization's last reported address. Noncompliance includes failure to file any documents required by this Act or the filing of incomplete or inaccurate documents.

(b) A charitable organization violates this Act if the organization:

(1) fails to file complete documents within 30 days after the date the notice required by Subsection (a) of this section has been mailed; or

(2) knowingly files materially inaccurate documents.

SECTION ___. REGISTRATION DOES NOT IMPLY ENDORSEMENT. Registration under this Act does not imply endorsement by this state or the attorney general, and charitable organizations are prohibited from stating or implying to the contrary.

SECTION ___. REMEDIES. (a) The attorney general may institute an action for failure to fully and accurately comply with this Act and may obtain injunctive relief to restrain a person from continuing a violation, cancellation or suspension of the registration, an order restraining the person from doing business in this state while violating this Act, a civil penalty of not more than $25,000 per violation, or injunctive relief and a civil penalty. A person who violates an injunction issued under this section is liable to the state for a civil penalty of not less than $100,000.

(b) The remedies authorized by this Act are not exclusive but are in addition to any other procedure or remedy provided for by other statutory or common law.

(c) In any proceeding successfully prosecuted by the attorney general under this Act, the court may allow the attorney general to recover civil penalties and the reasonable costs, expenses, and attorney's fees incurred in bringing the suit.

SECTION ___. DEDICATION OF FEES AND CIVIL PENALTIES. In addition to other money, all fees assessed under this Act and all recovered expenses incurred in obtaining injunctive relief and administrative and civil penalties authorized by this Act are dedicated for use by the attorney general in enforcing and administering this Act. Recovered expenses include investigative costs, witness fees, attorney's fees, and deposition expenses.

SECTION ___. VENUE. An action under this Act shall be brought in a court of competent jurisdiction in Travis County, in the county in which the charitable organization has its principal place of business or has a fixed and established place of business at the time the suit is brought, or in the county in which solicitation occurred.

SECTION ___. NOTICE TO CONTRIBUTORS; PROHIBITION. (a) If less than 90 percent of the contributions or funds collected by a charitable organization or commercial telephone solicitor are paid by the charitable organization or commercial telephone solicitor to a charitable organization, the commercial telephone solicitor shall notify each person solicited by telephone, before accepting a contribution or funds from the person, of the percentage of the contributions or funds that will be paid to the organization for which the contributions or funds are being solicited and the percentage that will be retained by the solicitor. This information shall also be included on any written statement mailed to the contributor.

(b) A charitable organization or commercial telephone solicitor may not make a telephone call to solicit contributions or funds unless the call is made after 9 a.m. and before 7 p.m., Monday through Friday.

SECTION ___. PROHIBITED PRACTICES. (a) A person may not commit an unfair or deceptive act or practice in the conduct of solicitations for a charitable organization.

(b) A person may not represent to a person solicited that a contribution is to be used to benefit the survivors of a law enforcement officer killed in the line of duty unless:

(1) 100 percent of the contributions collected are used to benefit those survivors; or

(2) the person solicited is informed in writing of the exact percentage of the contribution that will directly benefit those survivors.

SECTION ____. RULES. The attorney general may adopt rules, procedures, and forms that are consistent with and necessary for the proper administration and enforcement of this Act.

SECTION ___. TRANSITION. (a) The changes in law made by this Act apply only to a solicitation that takes place on or after the effective date of this Act. A solicitation that takes place before the effective date of this Act is governed by the law in effect on the date of the solicitation, and the former law is continued in effect for that purpose.

(b) A charitable organization engaging in telephone solicitation in this state on the effective date of this Act that is required to register under this Act shall file the organization's initial registration statement required under that section before January 1, 1998.

(7) Renumber the sections of the bill accordingly.

The amendments were read.

On motion of Senator Carona, the Senate concurred in the House amendments to **SB 1581** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1662

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1662** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 1662** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Cain, Lucio, Duncan, and Harris.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Wednesday, May 28, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

HJR 104
PURSUANT TO SCR 109 THE SPEAKER HAS REMOVED HIS SIGNATURE FROM THE RESOLUTION, AND THE RESOLUTION IS RETURNED TO THE SENATE FOR FURTHER ACTION.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

(Senator Madla in Chair)

SENATE BILL 385 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 385** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 385** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of health maintenance organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 2. DEFINITIONS. For the purposes of this Act:

(a) "Adverse determination" means a determination by a health maintenance organization or a utilization review agent that the health care services furnished to a patient or proposed to be furnished to a patient are not medically necessary or not appropriate in the allocation of health care resources.

(b) "Basic health care services" means health care services which the commissioner determines an enrolled population might reasonably require in order to be maintained in good health, including, at [~~as~~] a minimum, services designated as basic health services under Section 1302, Title XIII, Public Health Service Act (42 U.S.C. Section 300e-1(1)) [~~emergency care, inpatient hospital and medical services, and outpatient medical services~~].

[~~(b) "Board" means the Texas Board of Health.~~]

(c) "Capitation" means a method of compensation to a physician or provider based on a predetermined payment per enrollee for a specified period for certain enrollees in exchange for arranging for or providing a defined set of covered health care services to those enrollees for a specified period, regardless of the amount of services actually provided.

(d) "Commissioner" means the commissioner of insurance.

(e) "Complainant" means an enrollee, or a physician, provider, or other person designated to act on behalf of an enrollee, who files a complaint.

(f) "Complaint" means any dissatisfaction, expressed by a complainant orally or in writing to the health maintenance organization, with any aspect of the health maintenance organization's operation, including dissatisfaction expressed by a complainant with the plan administration, appeal of an adverse determination, the denial, reduction, or termination of a service, the way a service is provided, or disenrollment decisions. A complaint is not a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the enrollee.

(g) "Emergency care" means health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of recent onset and severity, including severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(1) placing the patient's health in serious jeopardy;

(2) serious impairment to bodily functions;

(3) serious dysfunction of any bodily organ or part;

(4) serious disfigurement; or

(5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(h) [~~(d)~~] "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(i) [~~(e)~~] "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(j) [~~(f)~~] "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.

(k) [~~(g)~~] "Health care" means prevention, maintenance, rehabilitation, pharmaceutical, mental health, and chiropractic services provided by qualified persons, other than medical care.

(l) [~~(h)~~] "Health care plan" means any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services; provided, however, a part of such plan consists of arranging for or the provision of health care services, as distinguished from indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(m) [~~(i)~~] "Health care services" means any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic, mental health, or dental care, or hospitalization or incident to the furnishing of such services, care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury or a single health care service plan.

(n) [~~(j)~~] "Health maintenance organization" means any person who arranges for or provides a health care plan or a single health care service plan to enrollees on a prepaid basis.

(o) "Life-threatening" means a disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(p) [~~(k)~~] "Medical care" means furnishing those services defined as practicing medicine under Section 1.03(8), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(q) [~~(l)~~] "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, limited liability companies, limited liability partnerships, or corporations.

(r) [~~(m)~~] "Physician" means:

(1) an individual licensed to practice medicine in this state;

(2) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(3) a medical school or medical and dental unit, as described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan;

(4) [~~or~~] a nonprofit health corporation certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); or

(5) [~~(3)~~] another person wholly owned by physicians.

(s) "Prospective enrollee" means:

(1) in the case of an individual who is a member of a group, an individual eligible for enrollment in a health maintenance organization purchased through that individual's group; or

(2) in the case of an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health maintenance organization plan, an individual who has expressed an interest in purchasing individual health maintenance organization coverage and who is eligible for coverage by the health maintenance organization.

(t) [~~(n)~~] "Provider" means:

(1) any person other than a physician, including a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, registered optician, pharmacy, hospital, or other institution or organization or person that is licensed or otherwise authorized to provide a health care service in this state;

(2) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed to provide the same health care service; or

(3) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(u) [~~(o)~~] "Sponsoring organization" means a person who guarantees the uncovered expenses of the health maintenance organization and who is financially capable, as determined by the commissioner, of meeting the obligations resulting from those guarantees.

(v) [~~(p)~~] "Uncovered expenses" means the estimated administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. Health care services may be considered covered if

the physician or provider agrees in writing that enrollees shall in no way be liable, assessable, or in any way subject to payment for services except as described in the evidence of coverage issued to the enrollee under Section 9 of this Act. The amount due on loans in the next calendar year will be considered uncovered expenses unless specifically subordinated to uncovered medical and health care expenses or unless guaranteed by the sponsoring organization.

(w) [~~(q)~~] "Uncovered liabilities" means obligations resulting from unpaid uncovered expenses, the outstanding indebtedness of loans that are not specifically subordinated to uncovered medical and health care expenses or guaranteed by the sponsoring organization, and all other monetary obligations that are not similarly subordinated or guaranteed.

(x) [~~(r)~~] "Single health care service" means a health care service that an enrolled population may reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing, or healing human illness or injury of a single specified nature and that is to be provided by one or more persons each of whom is licensed by the state to provide that specific health care service.

(y) [~~(s)~~] "Single health care service plan" means a plan under which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of a single health care service, provided, that a part of the plan consists of arranging for or the provision of the single health care service, as distinguished from an indemnification against the cost of that service, on a prepaid basis through insurance or otherwise and that no part of that plan consists of arranging for the provision of more than one health care need of a single specified nature.

(z) [~~(t) "Emergency care" means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:~~

[~~(1) placing the patient's health in serious jeopardy;~~

[~~(2) serious impairment to bodily functions; or~~

[~~(3) serious dysfunction of any bodily organ or part.~~

[~~(u)~~] "Health maintenance organization delivery network" means a health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with providers and physicians.

SECTION 2. Section 3, Texas Health Maintenance Organization Act (Article 20A.03, Vernon's Texas Insurance Code), is amended by adding Subsections (e), (f), (g), and (h) to read as follows:

(e) A person, physician, or provider may not perform any of the acts of a health maintenance organization, as defined by this Act, except as provided by and in accordance with the specific authorization of this Act or other law.

(f) A person, physician, or provider who performs any of the acts of a health maintenance organization that require a certificate of authority under this Act without having first obtained a certificate of authority from the Texas Department of Insurance is subject to all enforcement processes and procedures available against an unauthorized insurer under Articles 1.14-1 and 1.19-1, Insurance Code.

(g) Subsections (e) and (f) of this section do not apply to an activity exempt from regulation under Section 26(f) of this Act.

(h) The commissioner may exercise subpoena authority in accordance with Article 1.19-1, Insurance Code, in implementing this Act.

SECTION 3. Section 4, Texas Health Maintenance Organization Act (Article 20A.04, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a copy of the form of evidence of coverage to be issued to the enrollee;

(6) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(7) a current financial statement that includes:

(A) the sources and application of funds;

(B) projected financial statements during the initial period of operations;

(C) a balance sheet beginning as of the date of the expected start of operations;

(D) a statement of revenue and expenses with expected member months; and

(E) a cash flow statement that states any capital expenditures, purchase and sale of investments, and deposits with the state;

(8) the schedule of charges to be used during the first 12 months of operation;

(9) a statement acknowledging that all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state is valid if served in accordance with Article 1.36, Insurance Code;

(10) a statement reasonably describing the geographic area or areas to be served;

(11) a description of the complaint procedures to be utilized;

(12) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein; [~~and~~]

(13) a written description of health care plan terms and conditions made available to any current or prospective group contract holder or current or prospective enrollee of the health maintenance organization under the requirements of Section 11 of this Act;

(14) network configuration information, including an explanation of the adequacy of the physician and other provider network configuration; the information provided must include the names of physicians, specialty physicians, and other providers by zip code or zip code map and indicate whether each physician or other provider is accepting new patients from the health maintenance organization;

(15) a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or capitated risk arrangements, made or to be made with physicians and providers in exchange for the provision of or an arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers; those compensation arrangements are confidential and are not subject to the open records law, Chapter 552, Government Code;

(16) documentation demonstrating that the health maintenance organization will pay for emergency care services performed by non-network physicians or providers and that the health care plan contains, without regard to whether the physician or provider furnishing the services has a contractual or other arrangement with the entity to provide items or services to covered individuals, the following provisions and procedures for coverage of emergency care services:

(A) any medical screening examination or other evaluation required by state or federal law that is necessary to determine whether an emergency medical condition exists will be provided to covered enrollees in a hospital emergency facility or comparable facility;

(B) necessary emergency care services will be provided to covered enrollees, including the treatment and stabilization of an emergency medical condition; and

(C) services originated in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition will be provided to covered enrollees as approved by the health maintenance organization, provided that the health maintenance organization is required to approve or deny coverage of poststabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case to exceed one hour from the time of the request; the health maintenance organization must respond to inquiries from the treating physician or provider in compliance with this provision in the health maintenance organization's plan; and

(17) such other information as the commissioner may require to make the determinations required by this Act.

(b) The commissioner [~~State Board of Insurance~~] may promulgate such reasonable rules and regulations as the commissioner [~~it~~] deems necessary to the proper administration of this Act to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents described in Subsection (a) of this section to the commissioner, either for the commissioner's [~~his~~] approval or for information only, prior to the effectuation of the modification or amendment or to require the health maintenance organization to indicate the modifications to [~~both the board and~~] the commissioner at the time of the next site visit or examination. As soon as reasonably possible after any filing for approval required by this subsection is made, the commissioner shall in writing approve or disapprove it. Any modification or amendment for which the commissioner's approval is required shall be considered approved unless disapproved within 30 days; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

SECTION 4. Section 5, Texas Health Maintenance Organization Act (Article 20A.05, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 5. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a)[~~(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.~~

[~~(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:~~

[~~(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;~~

[~~(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and~~

[~~(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.~~

[~~(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.~~

[~~(b)~~] The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act, within 75 days of the receipt of a completed application [~~the certification of the board~~]; provided, however, that if notice and the

opportunity for a hearing is involved in a particular issuance or denial, then the matter must be scheduled for a hearing within 75 days of the receipt of a completed application. In any event, the commissioner may grant a delay of final action on the application to an applicant. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if the commissioner is satisfied that:

(1) the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to ensure that those health care services will be provided in a manner to ensure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, quality of care, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations adopted by the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, and availability and accessibility of its services; [~~board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and~~]

(2) [~~the commissioner is satisfied that:~~

[~~(A)~~] the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(3) [~~(B)~~] the health care plan or single health care service plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services or single health care service on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(4) [~~(C)~~] the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees, provided that in[~~:—In~~] making this determination, the commissioner shall consider:

(A) [~~(i)~~] the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(B) [~~(ii)~~] the adequacy of working capital;

(C) [~~(iii)~~] any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(D) [~~(iv)~~] any agreement which provides for the provision of health care services; and

(E) [~~(v)~~] any deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed; and

(5) [~~(D)~~] nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(b) [~~(c)~~] If [~~the board or~~] the commissioner[~~, or both,~~] shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient[;] and shall specify in what respects it is deficient.

(c) [~~(d)~~] A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Any change in control, as defined by Article 21.49—1 of the Insurance Code [~~of Texas~~], of the health maintenance organization, shall be subject to the approval of the commissioner.

SECTION 5. Section 9, Texas Health Maintenance Organization Act (Article 20A.09, Vernon's Texas Insurance Code), as amended by Chapters 1091 and 1096, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 9. EVIDENCE OF COVERAGE AND CHARGES. (a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; [~~and~~]

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical, health care services, or single health care service and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan or single health care service plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained; and

(iv) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee;

(C) a provision that, if medically necessary covered services are not available through network physicians or providers, the health maintenance organization must, on the request of a network physician or provider, within a reasonable period, allow referral to a non-network physician or provider and shall fully reimburse the non-network physician or provider; each contract must further provide for a review by a specialist of the same, or a similar, specialty as the physician or provider to whom a referral is requested before the health maintenance organization may deny a referral;

(D) a provision to allow enrollees with chronic, disabling, or life-threatening illnesses to apply to the health maintenance organization's medical director to use a nonprimary care physician specialist as a primary care physician, provided that:

(i) the request includes information specified by the health maintenance organization, including certification of medical need, and is signed by the enrollee and the nonprimary care physician specialist interested in serving as the primary care physician;

(ii) the nonprimary care physician specialist meets the health maintenance organization's requirements for primary care physician participation; and

(iii) the nonprimary care physician specialist is willing to accept the coordination of all of the enrollee's health care needs;

(E) a provision that if the request for special consideration specified by Paragraph (D) of this subdivision is denied, an enrollee may appeal the decision through the health maintenance organization's established complaint and appeals process; and

(F) a provision that the effective date of the new designation of a nonprimary care physician specialist as provided by Paragraph (D) of this subdivision may not be retroactive; the health maintenance organization may not reduce the amount of compensation owed to the original primary care physician prior to the date of the new designation.

(4) If an evidence of coverage provides benefits for rehabilitation services and therapies, the provision of those services and therapies that, in the opinion of a physician, are medically necessary may not be denied, limited, or terminated by a health maintenance organization based on a determination that the rehabilitation services and therapies are not resulting, or will not result, in significant improvement in the enrollee's condition.

(5) Any form of the evidence of coverage or group contract to be used in this state, and any amendments thereto, are subject to the filing and approval requirements of Subsection (c) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3)[~~, Subsection (a)~~] of this subsection [~~section~~], the requirements of Subdivision (3) shall be applicable.

(b) The formula or method for calculating the schedule of charges for enrollee coverage for medical services or health care services must be filed with the commissioner before it is used in conjunction with any health care plan. The formula or method must be established in accordance with actuarial principles for the various categories of enrollees. The charges resulting from the application of the formula or method may not be altered for an individual enrollee based on the status of that enrollee's health. The formula or method must produce charges that are not excessive, inadequate, or unfairly discriminatory, and benefits must be reasonable with respect to the rates produced by the formula or method. A statement by a qualified actuary that certifies the appropriateness of the formula or method must accompany the filing together with supporting information considered adequate by the commissioner.

(c) The commissioner shall, within a reasonable period, approve any form of the evidence of coverage or group contract, or amendment thereto, if the requirements of this section are met. After notice and opportunity for hearing, the commissioner may withdraw previous approval of any form, if the commissioner determines that it violates or does not comply with this Act or a rule adopted by the commissioner [~~State Board of Insurance~~]. It shall be unlawful to issue such form until approved. If the commissioner disapproves such form, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not disapprove any form within 30 days after the filing of such form it shall be considered approved; provided that the commissioner may by written notice extend the period for approval or disapproval of any filing for such further time, not exceeding an additional 30 days, as necessary for proper consideration of the filing.

(d) The commissioner may require the submission of whatever relevant information the commissioner considers [~~he or she deems~~] necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(e) Article 3.74 of the Texas Insurance Code applies to health maintenance organizations other than those health maintenance organizations offering only a single health care service plan.

(f) Article 3.51-9 of the [~~Texas~~] Insurance Code applies to health maintenance organizations other than those health maintenance organizations offering only a single health care service plan.

(g) Evidence of coverage does not constitute a health insurance policy as that term is defined by the Insurance Code.

(h) Article 3.70-1(F)(5) of the Insurance Code applies to health maintenance organizations other than those health maintenance organizations offering only a single health care service plan.

(i) [~~(h)~~] Article 3.72 of the Insurance Code applies to health maintenance organizations to the extent that such article is not in conflict with this Act and to the extent that the residential treatment center or crisis stabilization unit is located within the service area of the health maintenance organization and subject to such inspection and review as required by this Act or the rules hereunder.

(j) [~~(i)~~] A health maintenance organization shall comply with Article 21.55 of the Insurance Code with respect to prompt payment to enrollees [~~this code applies to out-of-area or emergency claims for which benefits are not assigned or payment is not made directly to the physician or provider~~]. A health maintenance organization shall make payment to a physician or provider for covered services rendered to enrollees of the health maintenance organization not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the health maintenance organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the health maintenance organization. For purposes of this subsection, "covered services" means health care services and benefits to which enrollees are entitled under the terms of an applicable evidence of coverage.

(k) [~~(j)~~] A health maintenance organization may provide benefits under a health care plan to a dependent grandchild of an enrollee when the dependent grandchild is less than 21 years old and living with and in the household of the enrollee.

(l) A health maintenance organization that offers a basic health care plan shall provide or arrange for the provision of basic health care services to its enrollees as needed and without limitations as to time and cost other than limitations prescribed by rule of the commissioner.

(m) Nothing in this Act shall require a health maintenance organization, physician, or provider to recommend, offer advice concerning, pay for, provide, assist in, perform, arrange, or participate in providing or performing any health care service that violates its religious convictions. A health maintenance organization that limits or denies health care services under this subsection shall set forth such limitations in the evidence of coverage as required by Section 9(a)(3) of this Act.

(n) The commissioner may adopt minimum standards relating to basic health care services.

SECTION 6. Section 11, Texas Health Maintenance Organization Act (Article 20A.11, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 11. INFORMATION TO PROSPECTIVE AND CURRENT GROUP CONTRACT HOLDERS AND ENROLLEES. (a) Each plan application form shall prominently include a space in which the enrollee at the time of application or enrollment shall make a selection of a primary care physician or primary care provider. An enrollee shall at all times have the right to select or change a primary care physician or primary care provider within the health maintenance organization network of available primary care physicians and primary care providers. However, a health maintenance organization may limit an enrollee's request to change physicians or providers to not more than four changes in any 12-month period.

(b) A health maintenance organization shall provide an accurate written description of health care plan terms and conditions to allow any current or prospective group contract holder and current or prospective enrollee eligible for enrollment in a health care plan to make comparisons and informed

decisions before selecting among health care plans. The written description must be in a readable and understandable format as prescribed by the commissioner and must include:

(1) a statement that the entity providing the coverage is a health maintenance organization;

(2) a toll-free telephone number, unless exempted by statute or rule, and the address for the prospective group contract holder or prospective enrollee to obtain additional information, including provider information;

(3) a description of each covered service and benefit, including a description of any options for prescription drug coverage, both generic and brand name;

(4) emergency care services and benefits, including coverage for out-of-area emergency care services and information on access to after-hours care;

(5) out-of-area services and benefits, if any;

(6) an explanation of the enrollee's financial responsibility for payment of premiums, copayments, deductibles, and any other out-of-pocket expenses for non-covered or out-of-plan services, and, if applicable, an explanation that network physicians and providers have agreed to look only to the health maintenance organization and not to its enrollees for payment of covered services except as set forth in this description;

(7) any applicable limitations and exclusions, including the existence of any drug formulary limitations;

(8) any prior authorization requirements, including limitations or restrictions on, and a summary of procedures to obtain approval for, referrals to providers other than primary care physicians or dentists, and other review requirements, including preauthorization review, concurrent review, post-service review, and post-payment review, and the consequences resulting from the failure to obtain any required authorizations;

(9) a provision for continuity of treatment in the event of the termination of a primary care physician;

(10) a summary of the complaint resolution procedures of the health maintenance organization and a statement that the health maintenance organization is prohibited from retaliating against a group contract holder or enrollee because the group contract holder or enrollee has filed a complaint against the health maintenance organization or appealed a decision of the health maintenance organization and is prohibited from retaliating against a physician or provider because the physician or provider has, on behalf of an enrollee, reasonably filed a complaint against the health maintenance organization or appealed a decision of the health maintenance organization;

(11) a current list of physicians and providers, updated on at least a quarterly basis, including names and locations of physicians and providers, a statement of limitations of accessibility and referrals to specialists, and a disclosure of which physicians and providers will not accept new enrollees or participate in closed-provider networks serving only enrollees;

(12) the service area; and

(13) any additional information as required by the commissioner.

(c) The health maintenance organization may provide a handbook published by the health maintenance organization to satisfy the requirements adopted under Subsection (b) of this section if the content of the handbook is substantially similar to and achieves the same level of disclosure as the written description prescribed by the commissioner and the current list of physicians and providers is also provided.

(d) A health maintenance organization shall notify a group contract holder of any substantive change to the payment arrangements between the health maintenance organization and health care physicians or providers not later than the 30th day after the effective date of the change.

(e) A health maintenance organization, or representative of a health maintenance organization, may not cause or knowingly permit the use of or distribution to a prospective enrollee of information that is untrue or misleading.

(f) Every health maintenance organization shall provide to its enrollees reasonable notice of any material adverse change in the operation of the organization that will affect them directly.

SECTION 7. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 11A to read as follows:

Sec. 11A. ACCESS TO CERTAIN INFORMATION. (a) Each health maintenance organization or approved nonprofit health corporation certified under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and holding a certificate of authority issued by the commissioner shall establish procedures to provide to an enrollee a member handbook and materials relating to the complaint and appeals process in the languages of the major populations of the enrolled population. For purposes of this subsection, a major population is defined as a group comprising 10 percent or more of the health maintenance organization's enrolled population.

(b) Each health maintenance organization and approved nonprofit health corporation certified under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and holding a certificate of authority issued by the commissioner shall establish procedures to provide access to a member handbook and the complaint and appeals process to an enrollee who has a disability affecting the enrollee's ability to communicate or to read.

SECTION 8. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 11B to read as follows:

Sec. 11B. INFORMATION TO ENROLLEES AND PROSPECTIVE ENROLLEES: MEDICARE-CONTRACTING HEALTH MAINTENANCE ORGANIZATION. (a) Before a prospective enrollee is enrolled in the health care plan offered to Medicare recipients by a Medicare-contracting health maintenance organization, the health maintenance organization must provide the prospective enrollee the following disclosure:

IF YOU ENROLL IN THIS HEALTH CARE PLAN AND REMAIN ENROLLED FOR MORE THAN SIX MONTHS AFTER YOUR 65TH

BIRTHDAY, YOU MAY LOSE YOUR OPPORTUNITY TO PURCHASE MEDICARE SUPPLEMENT INSURANCE (MEDIGAP). MEDICARE SUPPLEMENT INSURANCE (MEDIGAP) MUST BE OFFERED TO YOU WITHOUT REGARD TO YOUR HEALTH STATUS, INCLUDING ANY PREEXISTING CONDITION, BUT ONLY DURING THE FIRST SIX MONTHS AFTER YOUR 65TH BIRTHDAY. AFTER SIX MONTHS AFTER YOUR 65TH BIRTHDAY YOU MAY BE DENIED MEDICARE SUPPLEMENT INSURANCE (MEDIGAP), COVERAGE UNDER MEDICARE SUPPLEMENT INSURANCE (MEDIGAP) MAY BE LIMITED, OR YOU MAY BE SUBJECT TO HIGHER COSTS BECAUSE OF YOUR HEALTH STATUS.

(b) Before a prospective enrollee is enrolled, the health maintenance organization must obtain the prospective enrollee's signature acknowledging receipt of the disclosure required by Subsection (a) or this section.

SECTION 9. Section 12, Texas Health Maintenance Organization Act (Article 20A.12, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 12. COMPLAINT AND APPEAL SYSTEM. (a) Every health maintenance organization shall establish and maintain an internal system for the resolution of complaints, including a process for the notice and appeal of complaints. The commissioner may adopt reasonable rules as necessary or proper to implement and administer this section [~~a complaint system to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services~~] Each health maintenance organization shall implement and maintain a system for the resolution of complaints as provided by this section.

(b) If a complainant notifies the health maintenance organization orally or in writing of a complaint, the health maintenance organization, not later than the fifth business day after the date of the receipt of the complaint, shall send to the complainant a letter acknowledging the date of receipt of the complaint that includes a description of the organization's complaint procedures and time frames. If the complaint is received orally, the health maintenance organization shall also enclose a one-page complaint form.

(c) The health maintenance organization shall investigate each oral and written complaint received in accordance with its own policies and in compliance with this Act.

(d) The total time for acknowledgment, investigation, and resolution of the complaint by the health maintenance organization may not exceed 30 calendar days after the date the health maintenance organization receives the complaint from the complainant.

(e) Subsections (b) and (d) of this section do not apply to complaints concerning emergencies or denials of continued stays for hospitalization. Investigation and resolution of complaints concerning emergencies or denials of continued stays for hospitalization shall be concluded in accordance with the medical or dental immediacy of the case and may not exceed one business day from receipt of the complaint.

(f) After the health maintenance organization has investigated a complaint, the health maintenance organization shall issue a response letter

to the complainant explaining the health maintenance organization's resolution of the complaint within the time frame set forth in Subsection (d) of this section. The letter must include a statement of the specific medical and contractual reasons for the resolution and the specialization of any physician or other provider consulted. If the resolution is to deny services based on an adverse determination of medical necessity, the clinical basis used to reach that decision must be included. The response letter must contain a full description of the process for appeal, including the time frames for the appeals process and the time frames for the final decision on the appeal.

(g) If the complaint is not resolved to the satisfaction of the complainant, the health maintenance organization shall provide an appeals process that includes the right of the complainant either to appear in person before a complaint appeal panel where the enrollee normally receives health care services, unless another site is agreed to by the complainant, or to address a written appeal to the complaint appeal panel. The health maintenance organization shall complete the appeals process under this section not later than the 30th calendar day after the date of the receipt of the request for appeal.

(h) The health maintenance organization shall send an acknowledgment letter to the complainant not later than the fifth business day after the date of receipt of the request for appeal.

(i) The health maintenance organization shall appoint members to the complaint appeal panel, which shall advise the health maintenance organization on the resolution of the dispute. The complaint appeal panel shall be composed of equal numbers of health maintenance organization staff, physicians or other providers, and enrollees. A member of the complaint appeal panel may not have been previously involved in the disputed decision. The physicians or other providers must have experience in the area of care that is in dispute and must be independent of any physician or provider who made any prior determination. If specialty care is in dispute, the appeal panel must include an additional person who is a specialist in the field of care to which the appeal relates. The enrollees may not be employees of the health maintenance organization.

(j) Not later than the fifth business day before the scheduled meeting of the panel, the health maintenance organization shall provide to the complainant or the complainant's designated representative:

(1) any documentation to be presented to the panel by the health maintenance organization staff;

(2) the specialization of any physicians or providers consulted during the investigation; and

(3) the name and affiliation of each health maintenance organization representative on the panel.

(k) The complainant or the designated representative is entitled to:

(1) appear in person before the complaint appeal panel;

(2) present alternative expert testimony; and

(3) request the presence of and question any person responsible for making the prior determination that resulted in the appeal.

(l) Investigation and resolution of appeals relating to ongoing emergencies or denials of continued stays for hospitalization shall be concluded in accordance with the medical or dental immediacy of the case but in no event to exceed one business day after the complainant's request for appeal. Due to the ongoing emergency or continued hospital stay, and at the request of the complainant, the health maintenance organization shall provide, in lieu of a complaint appeal panel, a review by a physician or provider who has not previously reviewed the case and is of the same or similar specialty as typically manages the medical condition, procedure, or treatment under discussion for review of the appeal. The physician or provider reviewing the appeal may interview the patient or the patient's designated representative and shall render a decision on the appeal. Initial notice of the decision may be delivered orally if followed by written notice of the determination within three days. Investigation and resolution of appeals after emergency care has been provided shall be conducted in accordance with the process established under this section, including the right to a review by an appeal panel.

(m) Notice of the final decision of the health maintenance organization on the appeal must include a statement of the specific medical determination, clinical basis, and contractual criteria used to reach the final decision. The notice must also include the toll-free telephone number and the address of the Texas Department of Insurance.

(n) The health maintenance organization shall maintain a record of each complaint and any complaint proceeding, and any actions taken on a complaint for three years from the date of the receipt of the complaint. A complainant is entitled to a copy of the record on the applicable complaint and any complaint proceeding.

(o) Each health maintenance organization shall maintain a complaint and appeal log regarding each complaint.

(p) Each health maintenance organization shall maintain documentation on each complaint received and the action taken on the complaint until the third anniversary of the date of receipt of the complaint. The Texas Department of Insurance may review documentation maintained under this subsection during any investigation of the health maintenance organization.

(q) The commissioner [~~or board~~] may examine the [~~such~~] complaint system for compliance with this Act and may require the health maintenance organization to make corrections as considered necessary by the commissioner.

SECTION 10. The Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) is amended by adding Section 12A to read as follows:

Sec. 12A. FILING COMPLAINTS WITH THE TEXAS DEPARTMENT OF INSURANCE. (a) Any person, including a person who has attempted to resolve a complaint through the health maintenance organization's complaint system process and who is dissatisfied with the resolution offered through that process, may report an alleged violation of this Act to the Texas Department of Insurance.

(b) Not later than the 60th day after the date on which the Texas Department of Insurance receives a complaint against a health maintenance organization and all information necessary for the department to determine compliance, the commissioner shall investigate the complaint to determine compliance with this Act. The commissioner may extend for a period not to exceed six months the time to complete an investigation if:

(1) additional information is needed;

(2) an on-site review is necessary;

(3) the health maintenance organization, the physician or provider, or the complainant does not provide all documentation necessary to complete the investigation; or

(4) other circumstances beyond the control of the department occur.

SECTION 11. Subsections (a), (b), (c), (f), (g), and (h), Section 13, Texas Health Maintenance Organization Act (Article 20A.13, Vernon's Texas Insurance Code), are amended to read as follows:

(a) Unless otherwise provided by this section, each health maintenance organization shall deposit with the comptroller [~~State Treasurer~~] cash or securities, or any combination of these or other guarantees that are acceptable to the commissioner [~~State Board of Insurance~~], in an amount as set forth in this section.

(b) For a health maintenance organization which has not received a certificate of authority from the State Board of Insurance or the commissioner prior to September 1, 1987:

(1) the amount of the initial deposit or other guarantee shall be $100,000 for an organization offering basic health care services and $50,000 for an organization offering a single health care service plan;

(2) on or before March 15 of the year following the year in which the health maintenance organization receives a certificate of authority, it shall deposit with the comptroller [~~State Treasurer~~] an amount equal to the difference between the initial deposit and 100 percent of its estimated uncovered health care expenses for the first 12 months of operation;

(3) on or before March 15 of each subsequent year, it shall deposit the difference between its total uncovered health care expenses based on its annual statement from the previous year and the total amount previously deposited and not withdrawn from the State Treasury; and

(4) in any year in which the amount determined in accordance with Subdivision (3) of this subsection is zero or less than zero, the commissioner [~~State Board of Insurance~~] may not require the health maintenance organization to make any additional deposit under this subsection.

(c) For a health maintenance organization which has received a certificate of authority from the State Board of Insurance prior to September 1, 1987:

(1) on or before March 15, 1988, the organization shall deposit an amount equal to the sum of:

(A) $100,000 for an organization offering basic health care services or $50,000 for an organization offering a single health care service plan; and

(B) 100 percent of the uncovered health care expenses for the preceding 12 months of operation;

(2) on or before March 15 of each subsequent year, the organization shall make additional deposits of the difference between its total uncovered health care expenses based on its annual statement from the previous year and the total amount previously deposited and not withdrawn from the State Treasury; and

(3) in any year in which the amount determined in accordance with Subdivision (2) of this subsection is zero or less than zero, the commissioner [~~State Board of Insurance~~] may not require the health maintenance organization to make any additional deposit under this subsection.

(f) Upon application by a health maintenance organization operating for more than one year under a certificate of authority issued by the State Board of Insurance or the commissioner, the commissioner [~~State Board of Insurance~~] may waive some or all of the requirements of Subsection (b) or (c) of this section for any period of time it shall deem proper whenever it finds that one or more of the following conditions justifies such waiver:

(1) the total amount of the deposit or other guarantee is equal to 25 percent of the health maintenance organization's estimated uncovered expenses for the next calendar year;

(2) the health maintenance organization's net worth is equal to at least 25 percent of its estimated uncovered expenses for the next calendar year; or

(3) either the health maintenance organization has a net worth of $5,000,000 or its sponsoring organization has a net worth of at least $5,000,000 for each health maintenance organization whose uncovered expenses it guarantees.

(g) If one or more of the requirements is waived, any amount previously deposited shall remain on deposit until released in whole or in part by the comptroller [~~State Treasurer~~] upon order of the commissioner [~~State Board of Insurance~~] pursuant to Subsection (f) of this section.

(h) A health maintenance organization that has made a deposit with the comptroller [~~State Treasurer~~] may, at its option, withdraw the deposit or any part thereof, first having deposited with the comptroller [~~State Treasurer~~], in lieu thereof, a deposit of cash or securities of equal amount and value to that withdrawn. Any securities shall be approved by the commissioner [~~State Board of Insurance~~] before being substituted.

SECTION 12. Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), is amended by adding Subsections (i)-(m) to read as follows:

(i)(1) A health maintenance organization may not, as a condition of a contract with a physician or provider or in any other manner, prohibit, attempt to prohibit, or discourage a physician or provider from:

(A) discussing with or communicating to a current, prospective, or former patient, or a party designated by a patient, information or opinions regarding the patient's health care, including the patient's medical condition or treatment options; or

(B) discussing with or communicating in good faith to a current, prospective, or former patient, or a party designated by a patient, information or opinions regarding the provisions, terms, requirements, or

services of the health care plan as they relate to the medical needs of the patient.

(2) A health maintenance organization may not in any way penalize, terminate, or refuse to compensate, for covered services, a physician or provider for communicating with a current, prospective, or former patient, or a party designated by a patient, in a manner protected by this section.

(j) A health maintenance organization may not engage in any retaliatory action, including the refusal to renew or cancellation of coverage, against a group contract holder or enrollee because the group, enrollee, or person acting on behalf of the group or enrollee has filed a complaint against the health maintenance organization or appealed a decision of the health maintenance organization.

(k) A health maintenance organization may not engage in any retaliatory action, including termination of or refusal to renew a contract, against a physician or provider because the physician or provider has, on behalf of an enrollee, reasonably filed a complaint against the health maintenance organization or has appealed a decision of the health maintenance organization.

(l) A health maintenance organization may not use any financial incentive or make any payment to a physician or provider that acts directly or indirectly as an inducement to limit medically necessary services. This subsection does not prohibit the use of capitation as a method of payment.

(m) A health maintenance organization may not:

(1) require, as a condition of coverage or for any other reason:

(A) the observation of a psychotherapy session relating to or involving a covered person; or

(B) that a provider's process or progress notes be submitted to the health maintenance organization for review;

(2) deny benefits for psychotherapy on the grounds that the patient:

(A) refuses medication based on religious beliefs; or

(B) refuses medication for a period of time beyond the contract limits related to outpatient visits; or

(3) deny benefits for mental health therapy on the grounds that the therapy is provided in a group session with family members or other individuals.

SECTION 13. Section 15, Texas Health Maintenance Organization Act (Article 20A.15, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 15. REGULATION OF AGENTS [~~AGENT FOR SINGLE HEALTH CARE SERVICE PLANS~~]. (a) A health maintenance organization agent is anyone who represents any health maintenance organization in the solicitation, negotiation, procurement, or effectuation of health maintenance organization membership or holds himself or herself out as such. No person or other legal entity may perform the acts of a health maintenance organization agent within this state unless such person or legal entity has a valid health maintenance organization agent's license issued pursuant to this Act. The term "health maintenance organization agent" shall not include:

(1) any regular salaried officer or employee of a health maintenance organization or of a licensed health maintenance organization agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for health maintenance organization membership and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of membership in a health maintenance organization; provided that such employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the health maintenance organization issuing such health maintenance organization membership;

(3) banks or their officers and employees to the extent that such banks, officers, and employees collect and remit charges by charging same against accounts of depositors on the orders of such depositors; or

(4) any person or the employee of any person who has contracted to provide administrative, management, or health care services to a health maintenance organization and who is compensated for those services by the payment of an amount calculated as a percentage of the revenues, net income, or profit of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to this section.

(b) The commissioner [~~Commissioner of Insurance~~] shall collect in advance from health maintenance organization agent applicants a nonrefundable license fee in an amount not to exceed $50 as determined by the commissioner [~~board~~]. Unless the commissioner [~~State Board of Insurance~~] accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, the commissioner [~~Commissioner of Insurance~~] shall also collect from such applicants an examination fee in an amount not to exceed $20 as determined by the commissioner [~~board~~]. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the commissioner [~~Commissioner of Insurance~~] and received the commissioner's approval.

(c) Except as may be provided by a staggered renewal system adopted under Article 21.01-2, Insurance Code, and its subsequent amendments, each license issued to a health maintenance organization agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(d) Licenses which have not expired or been suspended or revoked may be renewed by filing with the commissioner [~~State Board of Insurance~~] a completed renewal application and by paying a nonrefundable renewal fee

in an amount not to exceed $50 as determined by the commissioner [~~board~~] on or before the expiration of the license.

(e) Any agent licensed under this section may represent and act as an agent for more than one health maintenance organization at any time while the agent's license is in force. Any such agent and the health maintenance organization involved must give notice to the commissioner [~~State Board of Insurance~~] of any additional appointment or appointments authorizing the agent to act as agent for an additional health maintenance organization or health maintenance organizations. Such notice must be accompanied by a certificate from each health maintenance organization to be named in each additional appointment that said health maintenance organization desires to appoint the applicant as its agent. This notice shall contain such other information as the commissioner [~~State Board of Insurance~~] may require. The agent shall be required to pay a nonrefundable fee in an amount not to exceed $16 as determined by the commissioner [~~board~~] for each additional appointment applied for, which fee shall accompany the notice. If approval of the additional appointment is not received from the commissioner [~~State Board of Insurance~~] before the eighth day after the date on which the completed notice and fee were received by the commissioner [~~board~~], the agent and the health maintenance organization, in the absence of notice of disapproval, may assume that the board approves the application, and the agent may act for the health maintenance organization. The commissioner [~~State Board of Insurance~~] shall suspend the license of an agent during any period in which the agent does not have an outstanding valid appointment to represent a health maintenance organization. The suspension shall be lifted on receipt by the commissioner [~~board~~] of acceptable notice of valid appointment.

(f) It shall be the duty of the commissioner to collect from every agent of any health maintenance organization in the State of Texas under the provisions of this section a licensing fee and an initial appointment fee for each appointment by a health maintenance organization. All fees collected under this section shall be used by the commissioner [~~State Board of Insurance~~] to administer the provisions of this [~~the Texas Health Maintenance Organization~~] Act and all laws of this state governing and regulating agents for such health maintenance organizations. All of such funds shall be paid into the State Treasury to the credit of the Texas Department [~~State Board~~] of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the commissioner [~~State Board of Insurance~~].

(g) The commissioner [~~State Board of Insurance~~] may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents.

(h) [~~(m) Duplicate License; Fee.~~] The commissioner [~~Commissioner of Insurance~~] shall collect in advance from agents requesting duplicate licenses a fee not to exceed $20. The commissioner [~~State Board of Insurance~~] shall determine the amount of the fee.

(i) [~~(n)~~] The commissioner [~~State Board of Insurance~~] shall issue a license to a corporation if it finds that:

(1) the corporation is organized or existing under the Texas Business Corporation Act, has its principal place of business in this state, and has as one of its purposes the authority to act as an agent under this section; and

(2) each officer, director, and shareholder of the corporation is individually licensed under this section.

(j) [~~(o)~~] This section may not be construed to permit any employee, agent, or corporation to perform any act of an agent under this section without obtaining a license.

(k) [~~(p)~~] If, at any time, a corporation that holds an agent's license does not maintain the qualifications necessary to obtain a license, the commissioner [~~State Board of Insurance~~] shall cancel or revoke the license of that corporation to act as an agent. If a person who is not a licensed agent under this section acquires shares in such a corporation by devise or descent, that person must either obtain a license or dispose of the shares to a person licensed under this section not later than the 90th day after the date on which the person acquires the shares.

(l) [~~(q)~~] If an unlicensed person acquires shares in a corporation and does not dispose of the shares within the 90-day period, the shares must be purchased by the corporation for the value of the shares as reflected by the regular books and records of the corporation as of the date of the acquisition of the shares by the unlicensed person. If the corporation fails or refuses to purchase the shares, the commissioner [~~State Board of Insurance~~] shall cancel its license.

(m) [~~(r)~~] A corporation may redeem the shares of any shareholder or the shares of a deceased shareholder on terms agreed to by the board of directors and the shareholder or the shareholder's personal representative or at a price and on terms provided in the articles of incorporation, the bylaws of the corporation, or an existing contract entered into by the shareholders of the corporation.

(n) [~~(s)~~] With the application for a license or a license renewal, each corporation licensed as an agent under this section must file a sworn statement listing the names and addresses of all of its officers, directors, and shareholders.

(o) [~~(t)~~] Each corporation shall notify the commissioner [~~State Board of Insurance~~] of any change in its officers, directors, or shareholders not later than the 30th day after the date on which the change takes effect.

(p) [~~(u)~~] Another corporation may not own an interest in a corporation licensed under this section. Each owner of an interest in a corporation licensed under this section must be a natural person who holds a valid license issued under this section.

SECTION 14. Section 15A, Texas Health Maintenance Organization Act (Article 20A.15A, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 15A. AGENTS FOR SINGLE HEALTH CARE SERVICE PLANS. (a) A person acting as an agent for a health maintenance organization offering only a single health care service plan who is licensed by examination under Article 21.07, Insurance Code, or Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is

subject to the licensing requirements provided by this section, and except as specifically provided by this Act or some other law, no other agent licensing requirements apply.

(b) The commissioner shall collect in advance from applicants for licensure as health maintenance organization agents under this section a nonrefundable license fee in an amount not to exceed $70 as determined by the commissioner [~~State Board of Insurance~~].

(c) Except as may be provided by a staggered renewal system adopted under Article 21.01-2, Insurance Code, and its subsequent amendments, each license issued to a health maintenance organization agent under this section shall expire two years following the date of issuance, unless before that time the license is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(d) Licenses issued under this section that have not expired or been suspended or revoked may be renewed by filing a completed application and paying to the commissioner [~~board~~] the required nonrefundable renewal fee in an amount not to exceed $50 as determined by the commissioner [~~board~~].

(e) An agent licensed under this section may represent and act as an agent for more than one health maintenance organization offering only a single health care service plan at any time while that agent's license is in force. The agent and the health maintenance organization offering only a single health care service plan involved must give notice to the commissioner [~~State Board of Insurance~~] of any additional appointment authorizing the agent to act as agent for an additional health maintenance organization offering only a single health care service plan. The notice must be accompanied by a certificate from each health maintenance organization to be named in each additional appointment stating that the health maintenance organization offers only a single health care service plan and desires to appoint the applicant as its agent. The notice must include other information required by the commissioner [~~State Board of Insurance~~]. The agent shall pay a nonrefundable fee in an amount not to exceed $70 as determined by the commissioner [~~State Board of Insurance~~] for each additional appointment applied for. The fee must accompany the notice. If approval of the additional appointment is not received from the commissioner [~~State Board of Insurance~~] before the eighth day after the date on which the completed notice and fee were received by the commissioner [~~board~~], the agent and the health maintenance organization, in the absence of notice of disapproval, may assume that the commissioner [~~board~~] approves the application, and the agent may act for the health maintenance organization offering a single health care service plan. The commissioner [~~State Board of Insurance~~] shall suspend the license of an agent during any period in which the agent does not have an outstanding valid appointment to represent a health maintenance organization offering a single health care service plan. The suspension shall be lifted on receipt by the commissioner [~~board~~] of acceptable notice of valid appointment.

(f) The commissioner shall collect from each agent for any health maintenance organization offering only a single health care service plan a license fee and an appointment fee for each additional appointment.

(g) Fees collected under this section shall be used by the commissioner [~~State Board of Insurance~~] to administer this Act and laws governing and regulating agents for health maintenance organizations. The funds shall be deposited in the state treasury to the credit of the Texas Department [~~State Board~~] of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the commissioner [~~State Board of Insurance~~].

(h) The commissioner [~~State Board of Insurance~~] may, after notice and hearing, adopt reasonable rules that are necessary to provide for the licensing of agents under this section.

(i) A licensee may renew an unexpired license issued under this section by filing the required renewal application and paying a nonrefundable fee with the commissioner [~~State Board of Insurance~~] on or before the expiration date of the license.

(j) [~~(i)~~] A health maintenance organization offering only a single health care service plan that desires to appoint an agent under this section shall provide to its prospective agents a written manual, a copy of which shall be filed with the commissioner [~~State Board of Insurance~~], outlining and describing the single health care service offered by the health maintenance organization, outlining this Act, and the rules of the [~~State Board of Insurance and~~] commissioner adopted under this Act. The health maintenance organization shall certify to the commissioner [~~State Board of Insurance~~] that it has provided the written manual required by this subsection to its prospective agents and has provided, under the supervision of a licensed health maintenance organization agent, a minimum of four hours of training in its single health care service, this Act, and the rules of the [~~State Board of Insurance and the~~] commissioner adopted under this Act.

(k) [~~(n)~~] Any regular salaried officer or employee of a health maintenance organization offering only a single health care service plan who solicits applications on behalf of that health maintenance organization must be licensed as a health maintenance organization agent under this section and must take any examination and pay any fee provided by Subsection [~~Subsections~~] (b) [~~and (j)~~] of Section 15 of this Act.

(l) [~~(o)~~] The commissioner shall collect in advance from agents requesting duplicate licenses a fee not to exceed $20. The commissioner [~~State Board of Insurance~~] shall determine the amount of the fee.

SECTION 15. Section 17, Texas Health Maintenance Organization Act (Article 20A.17, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 17. EXAMINATIONS. (a) The commissioner may make an examination concerning the quality of health care services and of the affairs of any applicant for a certificate of authority or any health maintenance organization as often as the commissioner considers [~~it is deemed~~] necessary, but not less frequently than once every three years.

(b) [~~The board may make an examination concerning the quality of health care services of any health maintenance organization as often as it deems it necessary, but not less frequently than once every three years.~~

[~~(c)~~] (1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider with whom a health maintenance organization has a contract, agreement, or other arrangement need only make available for examination that portion of its books and records relevant to its relationship with the health maintenance organization.

(2) A copy of any contract, agreement, or other arrangement between a health maintenance organization and a physician or provider shall be provided to the commissioner by the health maintenance organization on the request of the commissioner. The documentation provided to the commissioner under this subsection is confidential and is not subject to the open records law, Chapter 552, Government Code.

(3) Medical, hospital, and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(4) The commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee as that term is used in Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as necessary to carry out the purposes of this Act, including an enforcement action under Section 20 of this Act. That information is confidential and privileged and is not subject to the open records law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this Act.

(5) [~~(3)~~] For the purpose of examinations, the commissioner [~~and board~~] may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(c) [~~(d)~~] Articles 1.04A, 1.15, 1.16, and 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

(d) [~~(e)~~] Articles 1.12, 1.24, and 1.30, and Section 7 of Article 1.10, Insurance Code, apply to health maintenance organizations.

SECTION 16. Subsections (d) and (f), Section 18, Texas Health Maintenance Organization Act (Article 20A.18, Vernon's Texas Insurance Code), are amended to read as follows:

(d) Except as otherwise provided by this subsection, the bond required under Subsection (c) of this section must be issued by an insurance company that holds a certificate of authority in this state. If, after notice and hearing,

the commissioner [~~State Board of Insurance~~] determines that the fidelity bond required by this section is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a licensed Texas surplus lines agent resident in this state in compliance with Article 1.14-2, Insurance Code, satisfies the requirements of this section.

(f) Instead of a bond, the management contractor may deposit with the comptroller [~~State Treasurer~~] cash or securities acceptable to the commissioner [~~State Board of Insurance~~]. Such a deposit must be maintained in the amount and subject to the same conditions as required for a bond under this section.

SECTION 17. The Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) is amended by adding Section 18A to read as follows:

Sec. 18A. PHYSICIAN AND PROVIDER CONTRACTS. (a) A health maintenance organization, on request, shall make available and disclose to physicians and providers written application procedures and qualification requirements for contracting with the health maintenance organization. Each physician and provider who initially applies to contract with a health maintenance organization for the provision of health care services on behalf of the health maintenance organization and who is denied a contract with the health maintenance organization shall be provided written notice of the reasons the initial application was denied. Unless otherwise limited by Article 21.52B, Insurance Code, this subsection does not prohibit a health maintenance organization plan from rejecting an application from a physician or provider based on the determination that the plan has sufficient qualified physicians or providers.

(b) Before terminating a contract with a physician or provider, the health maintenance organization shall provide a written explanation to the physician or provider of the reasons for termination. On request and before the effective date of the termination, but within a period not to exceed 60 days, a physician or provider shall be entitled to a review of the health maintenance organization's proposed termination by an advisory review panel, except in a case in which there is imminent harm to patient health or an action by a state medical or dental board, other medical or dental licensing board, or other licensing board or other government agency, that effectively impairs the physician's or provider's ability to practice medicine, dentistry, or another profession, or in a case of fraud or malfeasance. The advisory review panel must be composed of physicians and providers, including at least one representative in the physician's or provider's specialty or a similar specialty, if available, appointed to serve on the standing quality assurance committee or utilization review committee of the health maintenance organization. The decision of the advisory review panel must be considered but is not binding on the health maintenance organization. The health maintenance organization shall provide to the affected physician or provider, on request, a copy of the recommendation of the advisory review panel and the health maintenance organization's determination.

(c) Each contract between a health maintenance organization and a physician or provider of health care services must provide that reasonable

advance notice be given to an enrollee of the impending termination from the plan of a physician or provider who is currently treating the enrollee. Each contract must also provide that the termination of the physician or provider contract, except for a reason of medical competence or professional behavior, does not release the health maintenance organization from the obligation to reimburse the physician or provider who is treating an enrollee who is subject to a special circumstance, such as a person who has a disability, acute condition, or life-threatening illness or who is past the twenty-fourth week of pregnancy, at not less than the contract rate for that enrollee's care in exchange for continuity of ongoing treatment of an enrollee then receiving medically necessary treatment in accordance with the dictates of medical prudence. For purposes of this subsection, "special circumstance" means a condition such that the treating physician or provider reasonably believes that discontinuing care by the treating physician or provider could cause harm to the patient. The special circumstance shall be identified by the treating physician or provider, who must request that the enrollee be permitted to continue treatment under the physician's or provider's care and agree not to seek payment from the patient of any amounts for which the enrollee would not be responsible if the physician or provider were still on the health maintenance organization network. Each contract between a health maintenance organization and a physician or provider must include procedures for resolving disputes regarding the necessity for continued treatment by a physician or provider. This section does not extend the obligation of the health maintenance organization to reimburse the terminated physician or provider for ongoing treatment of an enrollee beyond the 90th day after the effective date of the termination. However, the obligation of the health maintenance organization to reimburse the terminated physician or provider or, if applicable, the enrollee for services to an enrollee who, at the time of the termination:

(1) is past the 24th week of pregnancy extends through delivery of the child, immediate postpartum care, and the follow-up checkup within the first six weeks of delivery; or

(2) is being treated for a life-threatening illness or condition extends through the completion of the treatment if the physician or provider agrees to the provisions established under this section.

(d) A physician or provider who is terminated or deselected is entitled to an expedited review process by the health maintenance organization on request by the physician or provider. If the physician or provider is deselected for reasons other than at the physician's or provider's request, a health maintenance organization that has complied with the requirements of Subsection (b) of this section may give reasonable advance notice to an enrollee of the impending termination from the plan of a physician or provider who is currently treating the enrollee. If a physician or provider is deselected for reasons related to imminent harm, the health maintenance organization may notify patients immediately.

(e) The following provisions apply to each health maintenance organization that to any extent uses capitation as a method of compensation:

(1) The health maintenance organization shall begin payment of capitated amounts to the enrollee's primary care physician or primary care provider, computed from the date of enrollment, not later than the 30th day following the date an enrollee has selected or has been assigned a primary care physician or primary care provider. If selection or assignment does not occur at the time of enrollment, capitation that would otherwise have been paid to a selected primary care physician or primary care provider had a selection been made shall be reserved as a capitation payable until the time that an enrollee makes a selection or the plan assigns a primary care physician or primary care provider.

(2) If an enrollee does not select a primary care physician or primary care provider at the time of application or enrollment, a health maintenance organization shall assign an enrollee to a primary care physician or primary care provider not later than the 30th day after the date of the enrollment. If a health maintenance organization assigns an enrollee to a primary care physician or primary care provider, the assignment shall be made to a primary care physician or primary care provider located within the zip code nearest the enrollee's residence or place of employment and, to the extent practicable given the zip code limitation, shall be done in a manner that results in a fair and equal distribution of enrollees among the plan's primary care physicians or primary care providers. The health maintenance organization shall inform an enrollee of the name, address, and telephone number of the primary care physician or primary care provider to whom the enrollee has been assigned and of the enrollee's right to select a different primary care physician or primary care provider. An enrollee may at any time reject the physician or provider assigned and may select another physician or provider from the list of primary care physicians or primary care providers for the health maintenance organization network. An election by an enrollee to reject an assigned physician or provider may not be counted as a change in providers for purposes of the limitation described by Section 11(a) of this Act.

(3) A health maintenance organization shall notify a physician or provider of the selection of the physician or provider as a primary care physician or primary care provider by an enrollee not later than the 30th business day after the date of the selection or assignment of an enrollee to that physician or provider by the health maintenance organization.

(4) As an alternative to the provisions of Subdivisions (1), (2), and (3) of this subsection, a health maintenance organization may seek approval from the Texas Department of Insurance of a different capitation payment scheme that ensures:

(A) immediate availability and accessibility of a primary care physician or primary care provider; and

(B) payment to the primary care physician or primary care provider of a capitation amount certified by a qualified actuary to be actuarially sufficient to compensate the primary care physician or primary care provider for the risk being assumed.

(f) A contract between a health maintenance organization and a physician or provider may not contain any clause purporting to indemnify the health maintenance organization for any tort liability resulting from acts or omissions of the health maintenance organization.

(g) Each contract or other agreement between a health maintenance organization and a physician or provider must specify that the physician or provider will hold an enrollee harmless for payment of the cost of covered health care services in the event that the health maintenance organization fails to pay the provider for health care services.

(h) A health maintenance organization that conducts or uses economic profiling of physicians or providers within the health maintenance organization shall make available to a network physician or provider on request the economic profile of that physician or provider, including the standards by which the physician or provider is measured. The use of an economic profile must recognize the characteristics of a physician's or provider's practice that may account for variations from expected costs.

(i) A contract between a health maintenance organization and a physician or a provider must require the physician or provider to post, in the office of the physician or provider, a notice to enrollees on the process for resolving complaints with the health maintenance organization. The notice must include the Texas Department of Insurance's toll-free telephone number for filing complaints.

(j) For purposes of this section, "termination" includes the deselection of a physician or provider from a health maintenance organization or the failure or refusal of a health maintenance organization to renew a contract entered into with a physician or provider.

SECTION 18. Section 19, Texas Health Maintenance Organization Act (Article 20A.19, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 19. HAZARDOUS FINANCIAL CONDITION. (a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner [~~of insurance~~] may, after notice and opportunity for hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time;

(5) to increase the health maintenance organization's capital and surplus by contribution; or

(6) to suspend or revoke the certificate of authority.

(b) The commissioner [~~State Board of Insurance~~] is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

SECTION 19. Subsection (a), Section 20, Texas Health Maintenance Organization Act (Article 20A.20, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The commissioner may, after notice and opportunity for hearing, suspend or revoke any certificate of authority issued to a health maintenance organization under this Act, impose sanctions under Section 7, Article 1.10, Insurance Code, impose administrative penalties under Article 1.10E, Insurance Code, or issue a cease and desist order under Article 1.10A, Insurance Code, if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, or its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services or the single health care service plan does not provide or arrange for a single health care service.

(4) The [~~board certifies to the commissioner that:~~

[~~(A) the~~] health maintenance organization does not meet the requirements of Section 5(a)(1) [~~5(a)(2)~~] of this Act.[~~; or~~]

(5) The [~~(B) the~~] health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan or to furnish a single health care service as required under its single health care service plan.

(6) [~~(5)~~] The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(7) [~~(6)~~] The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) [~~(7)~~] The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) [~~(8)~~] The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) [~~(9)~~] The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(11) The health maintenance organization has failed to carry out corrective action the commissioner considers necessary to correct a failure to comply with this Act, any applicable provision of the Insurance Code, or any applicable rule or order of the commissioner not later than the 30th day after the date of notice of a deficiency or within any longer period that the commissioner determines to be reasonable and specifies in the notice.

SECTION 20. Section 22, Texas Health Maintenance Organization Act (Article 20A.22, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 22. RULES AND REGULATIONS. (a) The commissioner [~~State Board of Insurance~~] may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

(b) The commissioner [~~State Board of Insurance~~] is specifically authorized to promulgate rules to prescribe [~~prescribing~~] authorized investments for health maintenance organizations for all investments for which provision is not otherwise made in this Act, ensure that enrollees have adequate access to health care services, and establish minimum physician/patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting times for obtaining appointments. The rulemaking authority provided by this subsection does not limit in any manner the rulemaking authority granted to the commissioner [~~State Board of Insurance~~] under Subsection (a) of this section.

(c) The commissioner may promulgate such reasonable rules and regulations as are necessary and proper to meet the requirements of federal law and regulations.

SECTION 21. Section 23, Texas Health Maintenance Organization Act (Article 20A.23, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 23. APPEALS. (a) Any person who is affected by any rule, ruling, or decision of the Texas Department of Insurance or the commissioner [~~or board~~] shall have the right to have such rule, ruling, or decision reviewed by the commissioner [~~State Board of Insurance~~] by making an application to the commissioner [~~State Board of Insurance~~]. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the commissioner [~~State Board of Insurance~~], and the reasons and grounds for such action by the commissioner [~~State Board of Insurance~~]. The original shall be filed with the chief clerk of the Texas Department [~~State Board~~] of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the commissioner [~~State Board of Insurance~~] shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The commissioner [~~State Board of Insurance~~] shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said commissioner [~~State Board of Insurance~~].

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the commissioner [~~State Board of Insurance~~] whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the commissioner [~~State Board of Insurance~~] be dissatisfied with any rule, ruling, or decision adopted by the commissioner, [~~board, or State Board of Insurance,~~] that person, after failing to get relief from the commissioner [~~State Board of Insurance~~], may file a petition seeking review of the rule,

ruling, or decision and setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the commissioner [~~State Board of Insurance~~] as defendant. The action shall have precedence over all other causes on the docket of a different nature. The proceedings on appeal shall be tried and determined as provided by Article 1.04, Insurance Code. Either party to the action may appeal to the appellate court having jurisdiction of the cause and the appeal shall at once be returnable to the appellate court having jurisdiction of the cause and the action so appealed shall have precedence in the appellate court over all causes of a different character therein pending. The commissioner [~~State Board of Insurance~~] is not required to give any appeal bond in any cause arising hereunder.

SECTION 22. Subsection (f)(4), Section 26, Texas Health Maintenance Organization Act (Article 20A.26, Vernon's Texas Insurance Code), is amended to read as follows:

(4) Except for Articles 21.07-6 and 21.58A, Insurance Code, the insurance laws, including the group hospital service corporation law, do not apply to physicians and providers; however, [~~provided that Article 21.58A shall not apply to utilization review undertaken by~~] a physician or provider who conducts utilization review during [~~in~~] the ordinary course of treatment of patients [~~by a physician or provider~~] pursuant to a joint or delegated review agreement or agreements with a health maintenance organization on services rendered by the physician or provider may not be required to obtain certification under Section 3, Article 21.58A, Insurance Code.

SECTION 23. Section 28, Texas Health Maintenance Organization Act (Article 20A.28, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 28. AUTHORITY TO CONTRACT. The commissioner [~~or board~~], in carrying out the commissioner's [~~their~~] obligations under this Act, may contract with other state agencies or, after notice and opportunity for hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner [~~or board~~].

SECTION 24. Section 32, Texas Health Maintenance Organization Act (Article 20A.32, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 32. FEES. (a)(1) Every organization subject to this chapter shall pay to the commissioner the following fees:

(A) for filing and review of its original application for a certificate of authority, a fee in an amount not to exceed $18,000 [~~$15,000~~] as determined by the commissioner [~~State Board of Insurance~~];

(B) for filing each annual report pursuant to Section 10 of this Act, a fee in an amount not to exceed $500 as determined by the commissioner [~~State Board of Insurance~~];

(C) the expenses of all examinations of health maintenance organizations made on behalf of the State of Texas by the commissioner [~~State Board of Insurance~~] or under the commissioner's [~~its~~] authority in such amounts as the commissioner shall certify to be just and reasonable;

(D) the expenses of an examination under Section 17(a) of this Act incurred by the commissioner or under the commissioner's authority, if:

(i) examination expenses are the expenses attributable directly to a specific examination, including the actual salaries and expenses of the examiners directly attributable to that examination, as determined under rules adopted by the commissioner; and

(ii) the expenses are assessed by the commissioner and paid in accordance with rules adopted by the commissioner;

(E) the licensing, appointment, and examination fees pursuant to Section 15 of this[~~; Texas Health Maintenance Organization~~] Act [~~(Article 20A.15, Vernon's Texas Insurance Code)~~];

(F) [~~(E)~~] for filing an evidence of coverage which requires approval, a fee not to exceed $200 as determined by the commissioner [~~State Board of Insurance~~]; and

(G) [~~(F)~~] for filings required by rule but which do not require approval, a fee not to exceed $100 as determined by the commissioner [~~State Board of Insurance~~].

(2) The commissioner [~~State Board of Insurance~~] shall, within the limits fixed by this subsection, prescribe the fees to be charged under this subsection.

(3) Fees collected under this subsection must be deposited in the State Treasury to the credit of the Texas Department [~~State Board~~] of Insurance operating fund.

(4) Notwithstanding Subdivision (1) of this subsection, the comptroller shall collect the annual report filing fee prescribed by Subdivision (1)(B) of this subsection.

(b)[~~(1) Every organization subject to this chapter shall pay to the board the following fees:~~

[~~(A) for review of its original application for a certificate of authority, a fee in an amount not to exceed $3,000 as determined by the board and paid pursuant to rules adopted by the board; and~~

[~~(B) the expenses of an examination under Section 17(b) of this Act incurred by the board or under its authority.~~

[~~(2) Examination expenses are the expenses attributable directly to a specific examination including the actual salaries and expenses of the examiners plus the cost of administrative departmental expenses directly attributable to that examination as determined under rules adopted by the board. The expenses shall be assessed by the board and paid in accordance with rules adopted by the board.~~

[~~(3) Except as provided by Subdivision (4) of this subsection, the amount paid by a health maintenance organization in each taxable year under Subdivision (1)(B) of this subsection shall be allowed as a credit on the amount of premium taxes to be paid by the health maintenance organization for that taxable year.~~

[~~(4)~~] The amount directly attributable to an examination of the books, records, accounts, or principal offices of a health maintenance organization located outside this state may not be allowed as a credit against the amount of premium taxes to be paid by the health maintenance organization.

[~~(5) The funds received by the board shall be deposited in the state treasury to the credit of the Texas Department of Health health maintenance organization fund, and those funds shall be appropriated to the Texas Department of Health to carry out the statutory duties of the board under this chapter.~~]

SECTION 25. Subsections (a), (b), (c), (e), and (g), Section 36, Texas Health Maintenance Organization Act (Article 20A.36, Vernon's Texas Insurance Code), are amended to read as follows:

(a) The Health Maintenance Organization Solvency Surveillance Committee is created under the direction of the commissioner. The committee shall perform its functions under a plan of operation approved by the commissioner [~~State Board of Insurance~~]. The committee is composed of nine members appointed by the commissioner [~~of insurance~~]. No two members may be employees or officers of the same health maintenance organization or holding company system. The qualifications for membership, terms of office, and reimbursement of expenses shall be as provided by the plan of operation approved by the commissioner [~~State Board of Insurance~~]. A "member" is a Texas licensed health maintenance organization as defined in Section 2(n) [~~2(j)~~] of this Act or a public representative. The commissioner [~~of insurance~~] shall appoint the member along with the officer or employee of the member who shall serve on the committee if the member is a representative of a Texas licensed health maintenance organization or its holding company system. Five of the members shall represent health maintenance organizations or their holding company system. Of the health maintenance organization members, one shall be a single health care service plan as defined in Section 2(y) [~~2(s)~~] of this Act. The remaining health maintenance organization members shall be selected by the commissioner [~~of insurance~~] with due consideration of factors deemed appropriate including, but not limited to, the varying categories of premium income and geographical location.

A public representative may not be:

(1) an officer, director, or employee of a health maintenance organization, a health maintenance organization agent, or any other business entity regulated by the commissioner [~~State Board of Insurance~~];

(2) a person required to register with the Texas Ethics Commission [~~secretary of state~~] under Chapter 305, Government Code; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

(b)(1) The committee shall assist and advise the commissioner relating to the detection and prevention of insolvency problems regarding health maintenance organizations. The committee shall also assist and advise the commissioner regarding any health maintenance organization placed in rehabilitation, liquidation, supervision, or conservation. The method of providing this assistance and advice shall be as contained in the plan of operation approved by the commissioner [~~State Board of Insurance~~].

(2) Reports regarding the financial condition of Texas licensed health maintenance organizations and regarding the financial condition, administration, and status of health maintenance organizations in rehabilitation, liquidation, supervision, or conservation shall be provided to

the committee members at meetings. Committee members shall not reveal the condition of nor any information secured in the course of any meeting of the Solvency Surveillance Committee with regard to any corporation, form or person examined by the committee. Committee proceedings shall be filed with the commissioner [~~and reported to the members of the State Board of Insurance~~].

(c) To provide funds for the administrative expenses of the commissioner [~~State Board of Insurance~~] regarding rehabilitation, liquidation, supervision, or conservation of an impaired health maintenance organization in this state, the committee, at the commissioner's direction, shall assess each health maintenance organization licensed in this state in the proportion that the gross premiums of that health maintenance organization written in this state during the preceding calendar year bear to the aggregate gross premiums written in this state by all health maintenance organizations, as furnished to the committee by the commissioner after review of annual statements and other reports the commissioner considers necessary. Assessments to supplement or pay for administrative expenses of rehabilitation, liquidation, supervision, or conservation may be made only after the commissioner determines that adequate assets of the health maintenance organization are not immediately available for those purposes or that use of those assets could be detrimental to rehabilitation, liquidation, supervision, or conservation. The commissioner may abate or defer the assessments, either in whole or in part, if, in the opinion of the commissioner, payment of the assessment would endanger the ability of a health maintenance organization to fulfill its contractual obligations. If an assessment is abated or deferred, either in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the remaining licensed health maintenance organizations in a manner consistent with the basis for assessments provided by the plan of operation approved by the commissioner [~~State Board of Insurance~~]. The total of all assessments on a health maintenance organization may not exceed one-quarter of one percent of the health maintenance organization's gross premiums in any one calendar year.

(e) Not later than the 180th day after the date on which the final member of the committee is appointed, the committee shall submit to the commissioner [~~State Board of Insurance~~] a plan of operation. The plan of operation takes effect on approval in writing by the commissioner [~~State Board of Insurance~~]. If the committee fails to submit a suitable plan of operation within the period set by this subsection, or if, after the adoption of a plan, the committee fails to submit suitable amendments to the plan, the commissioner [~~State Board of Insurance~~] may, after notice and hearing, adopt rules as necessary to implement this Act. Those rules continue in effect until modified by the commissioner [~~State Board of Insurance~~] or superseded by a plan submitted by the committee and approved by the commissioner [~~State Board of Insurance~~].

(g) A licensed health maintenance organization or its agents or employees, the committee or its agents, employees, or members, or the [~~State Board of Insurance, the~~] commissioner[~~;~~] or the commissioner's [~~their~~] representatives are not liable in a civil action for any act taken or not taken in good faith in the performance of powers and duties under this section.

SECTION 26. The Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) is amended by adding Sections 37 and 38 to read as follows:

Sec. 37. HEALTH MAINTENANCE ORGANIZATION QUALITY ASSURANCE. (a) A health maintenance organization shall establish procedures to ensure that the health care services provided to enrollees are rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. Those procedures must include mechanisms to ensure availability, accessibility, quality, and continuity of care.

(b) A health maintenance organization shall have an ongoing internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services, in all institutional and noninstitutional contexts. The commissioner by rule may establish minimum standards and requirements for ongoing internal quality assurance programs for health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care.

(c) A health maintenance organization shall record formal proceedings of quality assurance program activities and maintain that documentation in a confidential manner. Quality assurance program minutes shall be available to the commissioner.

(d) A health maintenance organization shall establish and maintain a physician review panel to assist in reviewing medical guidelines or criteria and to assist in determining the prescription drugs to be covered by the health maintenance organization, if the health maintenance organization offers a prescription drug benefit.

(e) A health maintenance organization shall ensure the use and maintenance of an adequate patient record system that will facilitate documentation and retrieval of clinical information for the purpose of the health maintenance organization's evaluation of continuity and coordination of patient care and assessment of the quality of health and medical care provided to enrollees.

(f) Enrollees' clinical records shall be available to the commissioner for examination and review to determine compliance. Those records are confidential and privileged, and are not subject to the open records law, Chapter 552, Government Code, or to subpoena, except to the extent necessary to enable the commissioner to enforce this article.

(g) A health maintenance organization shall establish a mechanism for the periodic reporting of quality assurance program activities to its governing body, providers, and appropriate organization staff.

(h) With the advice and assistance of the Texas State Board of Pharmacy, the commissioner, not later than January 1, 1999, shall adopt rules that require each health maintenance organization to use standardized pharmacy benefit cards for its enrollees that meet all of the requirements of the United States Department of Health and Human Services and the National Council of Prescription Drug Programs (NCPDP), including:

(1) an unadultered patient identification number;

(2) the patient co-payment or cash discount amount; and

(3) the payer identification number.

Sec. 38. EFFECT OF DENTAL POINT-OF-SERVICE OPTION ON HEALTH MAINTENANCE ORGANIZATION. (a) Each dental health maintenance organization or other single service health maintenance organization that provides dental benefits is subject to this section. This section does not apply to a health maintenance organization with 10,000 or fewer enrollees in this state enrolled in dental benefit plans based on a provider panel.

(b) If an employer, association, or other private group arrangement that employs or has 25 or more employees or members offers and contributes to the cost of dental benefit plan coverage to employees or individuals only through a provider panel, the health maintenance organization with which the employer, association, or other private group arrangement is contracting for the coverage shall offer, or contract with another entity to offer, a dental point-of-service option to the employer, association, or other private group arrangement. The employer may offer the dental point-of-service option to the employee or individual to accept or reject.

(c) If a health maintenance organization's dental provider panel is the sole delivery system offered to employees by an employer, the health maintenance organization:

(1) shall offer the employer a dental point-of-service option;

(2) may not impose a minimum participation level on the dental point-of-service option; and

(3) as part of the group enrollment application, shall provide to each employer disclosure statements as required by rules adopted under this code for each dental plan offered.

(d) An employer may require an employee or individual who accepts the point-of-service option to be responsible for the payment of a premium over the amount of the premium for the coverage provided to employees or members under the dental benefit plan offered through a provider panel either directly or by payroll deduction in the same manner in which the other premium is paid. The premium for the point-of-service option must be based on the actuarial value of that coverage.

(e) Different cost-sharing provisions may be imposed for the point-of-service option.

(f) An employer may charge an employee or individual who accepts the point-of-service option a reasonable administrative fee for costs associated with the employer's reasonable administration of the point-of-service option.

(g) For purposes of this section:

(1) "Point-of-service option" means a plan provided through a contractual arrangement under which indemnity benefits for the cost of dental care services, other than emergency care or emergency dental care, are provided by an insurer or group hospital service corporation in conjunction with corresponding benefits arranged or provided by a health maintenance organization, and under which an enrollee may choose to obtain benefits or services under either the indemnity plan or the health maintenance

organization plan in accordance with specific provisions of a point-of-service contract.

(2) "Provider panel" means those providers with which a health maintenance organization contracts to provide dental services to enrollees covered under the dental benefit plan.

SECTION 27. Section 38, Texas Health Maintenance Organization Act (Article 20A.38, Vernon's Texas Insurance Code), as added by this Act, takes effect January 1, 1998.

SECTION 28. This Act applies only to an evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1998. An evidence of coverage that is delivered, issued for delivery, or renewed before January 1, 1998, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

SECTION 29. Except as provided by Section 27 of this Act, this Act takes effect September 1, 1997.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend **CSSB 385**, page 1, line 11, by striking after the word "necessary" and before the period, the words "or not appropriate in the allocation of health care resources".

Removes the language pertaining to rationing — "or is appropriate in the allocation of health care resources."

Floor Amendment No. 3

Amend **CSSB 385** as follows:

In SECTION 12., Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), add language to Subsection (1), page 39, line 17 after the word payment by striking the period and inserting new language to read as follows:

and does not prohibit a physician from accepting payments or financial incentives which are based on criteria including, without limitation, specific measures of quality.

Floor Amendment No. 5

Amend **CSSB 385**, page 66, beginning at line 13, by adding subsection (j) to Section 26, Texas Health Maintenance Organization Act (Article 20A.26, Vernon's Texas Insurance Code) to read as follows:

(j) This act applies to a medical school and medical and dental unit as defined by Section 61.003, 61.501, or 74.601, Education Code, except when such a medical school or medical and dental unit contracts to deliver medical care within a health maintenance organization delivery network.

Amendment No. 6

Amend **CSSB 385**, House committee report printing, on page 75 line 14 by adding "or to include on a card issued by the health maintenance organization with the plan's benefit information" between the words "cards" and "for".

Floor Amendment No. 7

Amend **CSSB 385** as follows:

(1) Add an appropriately numbered section to the bill to read as follows:

SECTION _____. The Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) is amended by adding Section 9A to read as follows:

Sec. 9A. HEALTH MAINTENANCE ORGANIZATION PROVIDING DENTAL BENEFITS; EVIDENCE OF COVERAGE; WRITTEN DESCRIPTION; RULES. (a) In addition to the requirements of Section 9 of this Act (Article 20A.09, Vernon's Texas Insurance Code), an evidence of coverage for a single health care service plan for dental benefits must:

(1) specify the total charges to an enrollee for typical sample office visits or procedures, such as an initial office visit, a crown, an extraction, or a filling;

(2) list the procedures that are covered by the plan and the enrollee's financial obligation for each listed procedure;

(3) describe the limitations on covered procedures and any exclusions from coverage, including the classes of procedures that are not covered; and

(4) include a glossary of dental terminology.

(b) In addition to the requirements of Sections 11 and 11A of this Act (Articles 20A.11 and 20A.11A, Vernon's Texas Insurance Code), the written description of the health care plan's terms and conditions for a single health care service plan for dental benefits must include:

(1) a list of the 30 dental procedures most commonly covered under dental benefits;

(2) a statement as to whether the single health care services plan provides benefits for each of the 30 listed procedures; and

(3) the amount that the enrollee will be required to pay for each listed procedure.

(c) The commissioner shall adopt rules governing the form and content of the information required to be provided under this section, including the form and content of the 30 dental procedures most commonly covered under dental benefits.

(2) Renumber the sections of the bill accordingly.

Floor Amendment No. 9

Amend **CSSB 385** as follows:

In SECTION 5 of the bill, in Section 9, Texas Health Maintenance Organization Act (Article 20A.09, Vernon's Texas Insurance Code), following new Paragraph (n), insert a new Paragraph (o) to read as follows:

"(o) The commissioner may adopt minimum standards relating to drug benefits to ensure the ability of physicians to exercise ordinary care in health care treatment decisions."

Floor Amendment No. 10

Amend **CSSB 385** as follows:

(1) Insert a new SECTION, appropriately numbered, to read as follows:

SECTION _____ . The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 14A to read as follows:

Sec. 14A. PROHIBITION OF PENALTIES FOR CERTAIN ACTS OF PHYSICIAN OR PROVIDER; ADMINISTRATIVE PENALTY. (a) A health maintenance organization may not include in a contract with a physician or provider who provides medical care or health care to a person covered under the plan any provision that penalizes the physician or provider for:

(1) referring the person for additional diagnosis or treatment by a specialist; or

(2) otherwise using the physician's or provider's own best professional judgment in prescribing a particular medication, treatment, or device for use by the person.

(b) This section does not preclude a health maintenance organization from using utilization review in a manner that complies with Article 21.58A, Insurance Code, in the operation of a health care plan offered by that health maintenance organization.

(c) A health maintenance organization that violates this article in the operation of a health care plan offered by that health maintenance organization is subject to an administrative penalty as provided by Article 1.10E, Insurance Code.

(2) Renumber the SECTIONS of the bill accordingly.

Floor Amendment No. 11

Amend **CSSB 385** as follows:

(1) Add a new section, appropriately numbered, to read as follows:

SECTION _____ . The Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) is amended by adding Section 9A to read as follows:

Sec. 9A. ENROLLEE WITH TERMINAL CONDITION. (a) Notwithstanding any other provision of this Act, if an enrollee is receiving services under a health care plan from a physician or provider for a terminal condition, and the agreement between the health maintenance organization and the physician or provider under which the services are provided is terminated, the enrollee may continue to receive services for which benefits are provided under the plan from the physician or provider.

(b) The health maintenance organization shall reimburse the physician or provider for services provided under this section at the usual and customary rate or at an agreed rate.

(c) The commissioner, by rule, may define a condition that is a terminal condition for purposes of this section.

(d) This section does not apply if the agreement with the physician or provider is terminated for a reason related to the medical competence or professional behavior of the physician or provider.

(2) In the transition material in the bill, add a new section, appropriately numbered, to read as follows:

SECTION ___. Section 9A, Texas Health Maintenance Organization Act (Article 20A.09A, Vernon's Texas Insurance Code), as added by this Act, applies only to an evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1998. An evidence of coverage that is delivered, issued for delivery, or renewed before January 1, 1998, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

(3) Renumber subsequent sections of the bill appropriately.

Amendment No. 12

Amend **CSSB 385** on page 26, lines 24-25, between "to" and "and", insert ", allows accurate comparisons to other plans,".

Floor Amendment No. 15

Amend **CSSB 385** on page 11, line 9, between "providers;" and "those", by inserting "on request of the commissioner, a health maintenance organization shall provide a description of specific compensation arrangements;".

Floor Amendment No. 17

Amend **CSSB 385** as follows:

(1) Insert a new SECTION to the bill, appropriately numbered, to read as follows:

SECTION ____ . The Texas Health Maintenance Act (Chapter 20A, Vernon's Texas Insurance Code), is amended by adding Section 9D to read as follows:

Sec. 9D. COVERAGE FOR MASSAGE THERAPY. (a) Each health maintenance organization shall provide coverage for massage therapy, as that term is defined in Section 1, Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes), administered by a person registered as a massage therapist under that Act, if:

(1) massage therapy is prescribed by a physician for the treatment of any condition; and

(2) that type of treatment would be covered by the health care plan offered to enrollees by the health maintenance organization if performed by a physician.

(b) The health maintenance organization may make the coverage offered under Subsection (a) of this section subject to the same copayment applicable to the condition for which massage therapy is prescribed.

(c) The commissioner may adopt rules as necessary to implement this section.

(2) Renumber the subsequent SECTIONS of the bill appropriately.

Floor Amendment No. 18

Amend **CSSB 385** as follows:

(1) In the recital to SECTION 12 of the bill, (page 38, line 7, House Committee Report Printing), strike "(i)-(m)" and substitute "(i)-(s)".

(2) In SECTION 12 of the bill, in Section 14, Texas Health Maintenance Act (Chapter 20A, Vernon's Texas Insurance Code), (page 40, between lines 6 and 7, House Committee Report Printing), insert Subsections (n)-(s) to read as follows:

(n) A health maintenance organization may not:

(1) prohibit or limit an enrollee from selecting a pharmacy or pharmacist of the person's choice to be a provider under the health care plan to furnish pharmaceutical services offered or provided by that plan or interfere with that person's selection of a pharmacy or pharmacist;

(2) deny a pharmacy or pharmacist the right to participate as a contract provider under the plan if the pharmacy or pharmacist agrees to provide pharmaceutical services that meet all terms and requirements of the plan and to include the same administrative, financial, and professional conditions that apply to pharmacies and pharmacists who have been designated as providers under the plan; or

(3) require an enrollee to obtain or request a specific quantity or dosage supply of pharmaceutical products.

(o) Notwithstanding Subsection (n)(3) of this section, a health maintenance organization may allow the physician of an enrollee to prescribe drugs in a quantity or dosage supply the physician determines appropriate and that is in compliance with state and federal statutes.

(p) This section does not prohibit:

(1) a provision of a plan from limiting the quantity or dosage supply of pharmaceutical products for which coverage is provided or providing financial incentives to encourage the enrollee and the prescribing physician to use a program that provides pharmaceutical products in quantities that result in cost savings to the health maintenance organization and the enrollee if the provision applies equally to all designated providers of pharmaceutical services under the health care plan;

(2) a pharmacy card program that provides a means of obtaining pharmaceutical services offered by the health care plan through all designated providers of pharmaceutical services; or

(3) a health maintenance organization from establishing reasonable application and recertification fees for a pharmacy which provides pharmaceutical services as a provider if the fees are uniformly charged to each pharmacy under contract with the organization.

(q) A provision of a health care plan that is delivered, issued for delivery, entered into, or renewed in this state that conflicts with Subsections (n)-(p) of this section is void to the extent of the conflict.

(r) Subsections (n)-(p) of this section do not require a health maintenance organization to provide pharmaceutical services. The provisions of those subsections do not apply to a self-insured employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001, et seq.).

(s) In Subsections (n)-(r) of this section, the terms "pharmacist," "pharmaceutical services," "pharmacy," "drugs," and "prescription drugs" have the meanings assigned by Article 21.52B, Insurance Code.

Floor Amendment No. 19

Amend **CSSB 385** by adding the following SECTION, appropriately numbered, to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION ____. (a) The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by Section 11C to read as follows:

Sec.11C. ENROLLEE INFORMATION RELATING HYSTERECTOMIES. (a) A physician providing services to an enrollee under a health care plan, before performing a hysterectomy on the enrollee, shall provide to the enrollee the materials described by this section. This subsection does not apply if the hysterectomy is performed in a life-threatening situation in which the physician determines that providing the materials is not reasonably possible. If providing the materials is not reasonably possible, the physician shall include in the enrollee's medical records a written statement signed by the physician certifying the nature of the emergency.

(b) The commissioner of insurance shall develop and prepare written materials to inform an enrollee of the risks and hazards of a hysterectomy and the availability of alternatives to a hysterectomy. In preparing the information to be provided under this section, the commissioner may consult with the Texas Medical Disclosure Panel established under the Medical Liability Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) or any other appropriate agency of this state.

(c) The materials shall be available in English, Spanish, and any other language the commissioner considers appropriate. The information must be presented in a manner understandable to a layperson.

(d) The materials must include:

(1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided under the health care plan or under programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment;

(2) the name of the person providing and explaining the materials;

(3) a statement that the enrollee understands that the enrollee will not be able to become pregnant or bear children if she undergoes a hysterectomy;

(4) a statement that the enrollee has the right to seek a consultation from a second physician participating in the health care plan;

(5) a statement that the enrollee has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina;

(6) blank spaces to list the procedures to be performed;

(7) a statement that the enrollee was informed of available and medically appropriate alternatives and blank spaces to list the alternatives;

(8) a description of the discomforts and risks that may accompany or follow the performance of the procedure;

(9) a description of the risks, hazards, and potential side effects of any anesthetic to be used;

(10) a blank space to indicate the approximate length of hospital stay and time of recovery;

(11) a statement of any related cost of the procedure that the enrollee will be required to pay; and

(12) a written statement to be signed by the enrollee indicating that the materials have been provided and explained to the enrollee and that the enrollee understands the nature and consequences of a hysterectomy.

(b) The commissioner of insurance shall prescribe the form and content of the materials required to be distributed under Section 11C, Texas Health Maintenance Organization Act (Section 20A.11C, Vernon's Texas Insurance Code), as added by this Act, not later than January 1, 1998.

(c) The change in law made by this section applies only to a hysterectomy performed on or after January 1, 1998, by a physician providing services to an enrollee under a health care plan.

Amendment No. 1 on Third Reading

Amend **CSSB 385** on third reading in SECTION ____, on page _____, following line ____, by adding Subsections (m) and (n) to read as follows:

"(m) A health maintenance organization shall not prohibit a beneficiary who is a resident of a continuing care retirement facility holding a certificate of authority under Chapter 246, Health and Safety Code, or a housing facility which provides residential living and also provides licensed nursing facility care or licensed personal care facility services on the same campus from choosing to receive covered services in that facility's licensed nursing facility or licensed personal care facility and shall not refuse to pay for covered services at the agreed upon or negotiated rate.

(n) A health maintenance organization shall not prohibit a beneficiary who is a resident of a nursing facility licensed under Chapter 242, Health and Safety Code, prior to a hospital stay from choosing to return to the nursing facility after a hospital stay and to receive covered services in that facility's licensed nursing facility and shall not refuse to pay for covered services at the agreed upon or negotiated rate."

Floor Amendment No. 2 on Third Reading

Amend **CSSB 385** on third reading as follows:

(1) In the introductory language to the SECTION of the bill in which Section 14, Texas Health Maintenance Act (Chapter 20A, Vernon's Texas Insurance Code) is amended, strike "Subsections (i)-(s)" and substitute "Subsections (i)-(m)".

(2) In Section 14, Texas Health Maintenance Act (Chapter 20A, Vernon's Texas Insurance Code), strike Subsections (n)-(s), as added by Floor Amendment No. 18 by Van de Putte.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 385** on third reading by adding the following new sections, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. Article 1.35A, Vernon's Texas Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) The office of public insurance counsel shall develop and implement a rating system to compare and evaluate, on an objective basis, the quality of care provided by, and the performance of health maintenance organizations.

(1) In developing the rating system, the office may use information or data from any person, agency, organization or governmental unit that the office deems reliable.

(2) The office shall develop and issue annually consumer report cards that identify and compare health maintenance organizations in this state. The consumer report card may be based on information or data from any person, agency, organization, or governmental unit that the office deems reliable.

(3) The department of insurance and the health care information council shall provide information or data as requested by the office of public insurance counsel in furtherance of these duties.

(4) The office is entitled to information provided by health maintenance organizations to the commissioner under this code or another insurance law of this state, including confidential information. The office may not make public confidential information provided to the office under this subsection, but may disclose a summary of the information that does not directly or indirectly identify the health maintenance organization that is the subject of the information. The office may not release, and a person or entity may not gain access to, any confidential information.

(5) The office of public insurance counsel shall provide a copy of the consumer report to any person on request on payment of a reasonable fee.

SECTION ___. Subsection (a), Article 1.35B, Vernon's Texas Insurance Code, is amended to read as follows:

(a) To defray the costs of creating, administering, and operating the office of public insurance counsel, the comptroller shall collect the following assessments annually in connection with the collection of other taxes imposed on insurers:

(1) each property and casualty insurer authorized to do business in this state shall pay an annual assessment of 5.7 cents for each policy of property and casualty insurance in force at year end in this state;

(2) each insurer shall pay an annual assessment of 5.7 [~~3~~] cents for each individual policy, and for each certificate of insurance evidencing coverage under a group policy, of life, health, or accident insurance written for delivery and placed in force with the initial premium thereon paid in full in this state during each calendar year if the insurer is authorized to do business in this state under:

(A) Chapter 3, 10, 11, 14, 20, 22, 23, or 25 of this code;

(B) Chapter 113, Acts of the 53rd Legislature, Regular Session, 1953 (Article 3.49-1, Vernon's Texas Insurance Code);

(C) Section 1, Chapter 417, Acts of the 56th Legislature, Regular Session, 1959 (Article 3.49-2, Vernon's Texas Insurance Code);

(D) the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code);

(E) the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code);

(F) Section 1, Chapter 123, Acts of the 60th Legislature, Regular Session, 1967 (Article 3.51-3, Vernon's Texas Insurance Code);

(G) Section 1, Chapter 387, Acts of the 55th Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas Insurance Code);

(H) Sections 1 to 3A and 4 to 13, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Articles 3.70-1 to 3.70-3A and 3.70-4 to 3.70-11, Vernon's Texas Insurance Code); or

(I) the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code); and

(3) each title insurance company authorized to do business in this state shall pay an annual assessment of 5.7 cents for each owner policy and mortgage policy of title insurance written for delivery in this state during each calendar year and for which the full basic premium is charged.

The amendments were read.

Senator Sibley moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 385** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Nelson, Harris, Cain, and Madla.

SENATE BILL 700 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 700** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **SB 700** as follows:

(1) On page 20, line 23, strike "Each" and substitute: "Except as provided by subsection (c), each"

(2) On page 21, line 9, insert the following subsection (c) to SECTION 21: "(c) If the property subject to delivery under subsection (a) is the contents of a safe deposit box, the comptroller may instruct a holder to deliver the property on a specified date after November 1st but before June 1st of the following year."

(3) On page 26, line 1, strike "a [~~an alphabetical~~]" and substitute: "an alphabetical".

(4) On page 42, line 22, insert the following subsection (d) to SECTION 39: "(d) The change in law under Sections 74.201 and 74.202, Property Code, as amended by this Act applies to any notice requirement provided under Section 74.201 on or after September 1, 1997, including notice requirements for property reported prior to September 1, 1997."

(5) On page 25, line 24, insert the following Section 74.3061 to SECTION 24: "Sec. 74.3061. ESCHEAT OF FUNDS IN THE POSSESSION OF THE UNITED STATES. (a) In the event any money is due to a resident of this state in the nature of a refund, rebate or other overpayment of taxes or fees to the United States, with respect to which the resident is likely to have his rights to secure such refund or rebate barred by a statute of limitations, or if for any reason at least three years has elapsed after the date of which the resident could have filed a timely claim for said refund or rebate, the comptroller is appointed agent of such resident to apply for said refund or rebate, and is authorized to do any act which a natural person could do to recover said money. When the comptroller files an application or initiates any other proceeding to secure said refund or rebate, the comptroller is coupled with an interest in the money sought and money recovered. All property within this provision, including all principal and interest accruing thereon, is declared to have escheated and to have become the property of the state.

(b) The funds escheated by the state pursuant to this provision shall be noticed as provided by Section 74.201. Title to any such property shall be transferred by the state to any persons who in accordance with subchapter F can show that the property belonged to them immediately prior to the escheat or that they were heirs to those funds immediately prior to the escheat."

Floor Amendment No. 2

Amend **SB 700** by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill appropriately:

SECTION ___. Section 74.001, Property Code, is amended to read as follows:

Sec. 74.001. APPLICABILITY. (a) Except as provided by Subsection (b), this [~~This~~] chapter applies to a holder of property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75.

(b) This chapter does not apply to a holder of property subject to Chapter 76.

SECTION ___. Title 6, Property Code, is amended by adding Chapter 76 to read as follows:

CHAPTER 76. REPORT, DELIVERY, AND CLAIMS PROCESS FOR CERTAIN PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. APPLICABILITY. This chapter applies only to the holder of property if:

(1) the holder is a municipality or county; and

(2) the property is:

(A) presumed abandoned under Chapter 72 or 75; and

(B) valued at $100 or less.

Sec. 76.002. OFFICERS AND REPRESENTATIVES. In this chapter:

(1) a reference to the treasurer of a holder includes a person performing the duties of the treasurer of a holder in a municipality or county in which the office of treasurer does not exist; and

(2) a reference to the attorney for a holder includes an attorney designated by the governing body of the holder to represent the holder.

[Sections 76.003-76.100 reserved for expansion]

SUBCHAPTER B. PROPERTY REPORT

Sec. 76.101. PROPERTY REPORT. (a) Each holder who on June 30 holds property subject to this chapter shall file a report of that property on or before the following November 1. Each report shall be filed with the treasurer of the holder as provided by this section and on forms prescribed by the treasurer of the holder.

(b) A holder required by Subsection (a) to file a report shall file a report each successive year regardless of whether the holder has any reportable property on June 30 of the year in which the report is filed.

Sec. 76.102. VERIFICATION. (a) The person preparing a property report shall place at the end of each copy of the report a verification made under oath and executed by the chief fiscal officer of the holder, as designated by the holder.

(b) The verification must include the following sentence: "This report contains a full and complete list of all property held by the undersigned that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

Sec. 76.103. RETENTION OF RECORDS. (a) The holder required to file a property report shall keep a record of:

(1) the name and last known address of each person who, from the records of the holder, appears to be the owner of the property;

(2) a brief description of the property, including the identification number of the account, if any; and

(3) the balance of each account, if appropriate.

(b) The record must be kept until the 10th anniversary of the date on which the property is reportable.

(c) The treasurer of the holder may provide for a shorter period for keeping a record required by this section.

Sec. 76.104. CONFIDENTIALITY OF PROPERTY REPORT. (a) Except as provided by this chapter, a property report filed with the treasurer of the holder is confidential until the second anniversary of the date the report is filed.

(b) Notwithstanding other law, the social security number of an owner that is reported to the treasurer of the holder is confidential.

[Sections 76.105-76.200 reserved for expansion]

SUBCHAPTER C. NOTICE

Sec. 76.201. PUBLISHED NOTICE. (a) Except as provided by Subsections (b) and (e), the treasurer of a holder shall publish a notice in a newspaper in the calendar year immediately following the year in which the

property report is filed. The newspaper must be a newspaper of general circulation in the jurisdiction of the holder.

(b) The treasurer of the holder may use a method of publishing notice that is different from that prescribed by Subsection (a) if the treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.

(c) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) a statement that, by addressing an inquiry to the treasurer of the holder, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount of the property; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

(d) The treasurer of a holder may offer for sale space for suitable advertisements in a notice published under this section. Proceeds from the sale of the advertising space shall be used to defray the cost of publishing the notices, with the remaining amount, if any, to be deposited to the credit of the unclaimed money fund.

(e) In the notice required by this section, the treasurer of the holder may publish other information regarding property if the treasurer determines that publication of that information is in the public interest.

Sec. 76.202. NOTICE TO OWNER. (a) During the calendar year immediately following the year in which the property report is filed, the treasurer of the holder may mail a notice to each person who has an address in this state and appears to be entitled to the reported property.

(b) The notice must contain:

(1) a statement that property is being held by the treasurer of the holder to which the addressee appears to be entitled; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

Sec. 76.203. NOTICE THAT ACCOUNTS ARE SUBJECT TO THIS CHAPTER. Publication of notice in accordance with Section 76.201 is notice to the owner by the holder that the reported property is subject to this chapter.

Sec. 76.204. CHARGE FOR NOTICE. The treasurer of the holder may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice required by Section 76.201; and

(2) the amount paid in postage for the notice to the owner required by Section 76.202.

[Sections 76.205-76.300 reserved for expansion]

SUBCHAPTER D. DELIVERY

Sec. 76.301. DELIVERY OF PROPERTY TO TREASURER. (a) Each holder who on June 30 holds property that is subject to this chapter shall deliver the property to the treasurer of the holder on or before the following November 1 accompanied by the property report.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate

or other evidence of ownership to the treasurer of the holder at the time delivery is required under this section.

Sec. 76.302. VERIFICATION OF DELIVERED PROPERTY. (a) Property delivered under Section 76.301 must be accompanied by a verification under oath that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property.

(b) The verification required by Subsection (a) shall be signed by the chief fiscal officer of the holder, as designated by the holder.

Sec. 76.303. LIST OF OWNERS. (a) The treasurer of the holder shall compile and revise each year an alphabetical list of names and last known addresses of the owners listed in the reports and the amount credited to each account.

(b) The treasurer of the holder shall make the list available for public inspection during all reasonable business hours.

Sec. 76.304. PERIOD OF LIMITATION NOT A BAR. The expiration of any period specified by statute or court order, during which an action or proceeding may be initiated or entered to obtain payment of a claim for money, does not prevent the money from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to deliver abandoned property to the treasurer of the holder.

[Sections 76.305-76.400 reserved for expansion]

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Sec. 76.401. SALE OF PROPERTY. (a) Except as provided by Subsection (c), the treasurer of the holder shall sell at public sale all personal property, other than money and marketable securities, delivered to the treasurer of the holder in accordance with Section 76.301. The treasurer of the holder shall conduct the sale in the holder's jurisdiction.

(b) The treasurer of the holder shall sell the property to the highest bidder. If the treasurer of the holder determines that the highest bid is insufficient, the treasurer of the holder may decline that bid and offer the property for public or private sale.

(c) The treasurer of the holder is not required to offer property for sale if the property belongs to a person with an address outside this state or the treasurer of the holder determines that the probable cost of the sale of the property exceeds its value.

(d) If after investigation the treasurer of the holder determines that property delivered has insubstantial commercial value, the treasurer of the holder may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because of an action taken by the treasurer of the holder under this section.

Sec. 76.402. NOTICE OF SALE. Before the 21st day before the day on which a public sale is held under Section 76.401, the treasurer of the holder

shall publish notice of the sale in a newspaper of general circulation in the county where the sale is to be held.

Sec. 76.403. PURCHASER'S TITLE. (a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The treasurer of the holder shall execute all documents necessary to complete the transfer of title.

[Sections 76.404-76.500 reserved for expansion]

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Sec. 76.501. FILING OF CLAIM. (a) A claim for property delivered to the treasurer of the holder under this chapter must be filed with the treasurer of the holder.

(b) All claims to which this section applies must be filed in accordance with procedures and on forms prescribed by the treasurer of the holder.

Sec. 76.502. CONSIDERATION OF CLAIM. The treasurer of the holder shall consider the validity of each claim filed under this subchapter.

Sec. 76.503. HEARING. (a) The treasurer of the holder may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the treasurer of the holder considers that a hearing is necessary to determine the validity of a claim, the treasurer of the holder shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the treasurer of the holder determines that a claim is valid, the treasurer of the holder shall approve and sign the claim.

Sec. 76.504. PAYMENT OF CLAIM. (a) If a claim has been approved under this subchapter, the treasurer of the holder shall pay the claim.

(b) If a claim is for personal property other than money and has been approved under this subchapter, the treasurer of the holder promptly shall deliver the property to the claimant unless the treasurer of the holder has sold the property. If the property has been sold under Section 76.401, the treasurer of the holder shall pay to the claimant the proceeds from the sale.

(c) Costs of publication and postage shall be deducted from the amounts paid under this section, but deductions for any costs of administration or service charges may not be made.

Sec. 76.505. APPEAL. (a) A person aggrieved by the decision on a claim filed under this subchapter may appeal the decision before the 61st day after the date the decision was rendered.

(b) If a claim has not been decided before the 91st day after the date the claim was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(c) An appeal under this section must be made by filing suit against the holder in a district court in the county in which the claimed property is located. The holder's immunity from suit without consent is waived with respect to a suit under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Sec. 76.506. FEE FOR RECOVERY. A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the treasurer of the holder under this chapter, that has been reported to the treasurer of the holder, or that is in the possession of the treasurer of the holder may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

Sec. 76.507. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. (a) At any time after property has been paid or delivered to the treasurer of the holder under this chapter, another state may recover the property if:

(1) the property was subjected to custody by the holder because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state; or

(3) the records of the holder were erroneous in that the records did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the treasurer of the holder, who shall decide the claim within 90 days after the date it is presented. The treasurer of the holder shall allow the claim if the treasurer of the holder determines that the other state is entitled to the abandoned property under Subsection (a).

[Sections 76.508-76.600 reserved for expansion]

SUBCHAPTER G. UNCLAIMED MONEY FUND

Sec. 76.601. FUND. (a) The treasurer of the holder shall maintain a fund known as the unclaimed money fund.

(b) The treasurer of the holder shall deposit to the credit of the fund:

(1) all funds, including marketable securities, delivered to the treasurer of the holder under this chapter or any other statute requiring the delivery of unclaimed property to the treasurer of the holder;

(2) all proceeds from the sale of any property, including marketable securities, under this chapter; and

(3) any income derived from investments of the fund.

(c) The treasurer of the holder shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) The treasurer of the holder shall from time to time invest the amount in the unclaimed money fund in investments approved by law for the investment of funds by the holder.

(e) The treasurer of the holder may from time to time sell securities in the fund, including stocks, bonds, and mutual funds, and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making the investments, the treasurer of the holder shall exercise the judgment and care of a prudent person.

(f) The treasurer of the holder shall keep a separate record and accounting for securities delivered, sold, purchased, or exchanged and the proceeds and earnings from the securities.

Sec. 76.602. USE OF FUND. (a) The treasurer of the holder shall use the unclaimed money fund to pay the claims of persons establishing ownership of property in the possession of the treasurer of the holder under this chapter or under any other unclaimed property or escheat statute.

(b) Each fiscal year after deducting funds sufficient to pay anticipated expenses and claims of the unclaimed money fund, the treasurer of the holder shall transfer the remainder to the general fund of the holder.

(c) The treasurer of the holder and the attorney for the holder may use the unclaimed money fund generally for the enforcement and administration of this chapter, including the expenses of forms, notices, examinations, travel, court costs, supplies, equipment, and employment of necessary personnel and other necessary expenses.

Sec. 76.603. AUDIT; BUDGET. The unclaimed money fund is subject to:

(1) audit by the auditor of the holder or an independent auditor if the holder does not have an auditor; and

(2) budgetary procedures adopted by the governing body of the holder.

[Sections 76.604-76.700 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

Sec. 76.701. RULES. The treasurer of the holder may adopt rules necessary to carry out this chapter.

Sec. 76.702. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the treasurer of the holder, at any reasonable time, may examine the books and records of the holder.

(b) The treasurer of the holder, attorney for the holder, or an agent of either person may not make public any information obtained by an examination made under this section and may not disclose that information except:

(1) in the course of a judicial proceeding authorized by this chapter in which the holder is a party; or

(2) under an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Sec. 76.703. ADDITIONAL PERSONNEL. (a) The treasurer of the holder and the attorney for the holder may employ, in the office of either person, additional personnel necessary to enforce this chapter.

(b) The salary rate of additional personnel may not exceed the rate paid to other employees of the holder for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 76.602.

Sec. 76.704. OFFENSE. (a) A person commits an offense if the person:

(1) wilfully fails to file a report required by this chapter;

(2) refuses to permit examination of records in accordance with this chapter;

(3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds; or

(4) violates any other provision of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not less than $500 or more than $1,000;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

(c) In addition to a criminal penalty, a person who commits an offense under Subsection (a) is subject to a civil penalty not to exceed $100 for each day of the violation. The attorney for the holder shall collect the civil penalty by bringing suit in a district court of the county in which the holder is located.

SECTION _____. (a) The changes in law made by Section 74.001, Property Code, as amended by this Act, and Chapter 76, Property Code, as added by this Act, apply only to unclaimed property held by a holder, as that term is used in Chapter 76, Property Code, as added by this Act, on or after June 30, 1998.

(b) Property held by a holder, as that term is used in Chapter 76, Property Code, as added by this Act, on June 30, 1997, is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Floor Amendment No. 3

Amend Floor Amendment No. 2 to **SB 700** by adding the following at the end of the amendment:

SECTION _____. (a) Interest, attorney's fees, and penalties owed by a county or municipality under Section 74.705, Property Code, before June 30, 1998, are not required to be paid if the county or municipality delivers to the comptroller not later than March 1, 1999, the property for which the interest, attorney's fees, or penalties have accrued. The waiver of interest, attorney's fees, and penalties provided by this subsection is for the purpose of permitting the county or municipality to defray the costs of administering Chapter 76, Property Code, as added by this Act.

(b) Any property valued at $100 or less that is required to be delivered to the comptroller by a county or municipality under Chapter 74, Property Code, before June 30, 1998, and that has not been delivered to the comptroller by that date:

(1) is not required to be delivered to the comptroller; and

(2) will not accrue interest, attorney's fees, or penalties after June 30, 1998.

Amendment No. 1 on Third Reading

Amend **SB 700** on third reading as follows:

(1) Amend Section 76.603, Property Code, as added by this bill, by adding new subsection (d) to read as follows:

(d) The provisions of this section are subject to the budgetary procedures adopted by the governing body of the holder.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 700** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Nixon, Shapiro, Truan, and Nelson.

CONFERENCE COMMITTEE ON HOUSE BILL 2272

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2272** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2272** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Ellis, Cain, Harris, and Luna.

SENATE BILL 645 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 645** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **SB 645**, SECTION 46 of the bill, as follows:

On page 28, line 13, Subsection (f)(1), between "institutions" and "[~~institution~~]", insert ", including credit unions".

AND

On page 28, lines 14-23 strike Subdivision (2) in its entirety and insert a new Subdivision (2) to read:

(2) The comptroller may also use the electronic funds transfer system to deposit a portion of an employee's gross pay into the employee's account at a credit union as prescribed by Subchapter G, Chapter 659, Government Code.

Committee Amendment No. 2

Amend **SB 645** as follows:

In SECTION 65 of the bill, in Section 17, Article 5.76-3, Insurance Code (page 40, line 6,) strike "for inclusion in" and substitute "submission simultaneously with"; and (page 40, line 7-8) between "The" and "annual financial report" insert "board's".

Committee Amendment No. 3

Amend **SB 645**:

In Section 66, Subsection (a), Section 403.021, Government Code, page 40, lines 13-20, strike Subsection (a) and insert the following Subsection (a):

(a) A state agency that expends appropriated funds shall report into the uniform statewide accounting system all payables and [~~submit a binding~~] estimated encumbrances for the first three quarters of the current appropriation year within 30 days after the close of each quarter and submit a binding encumbrance report to the comptroller, the state auditor, and the Legislative Budget Office no later than October 30 of each year.

Floor Amendment No. 5

Amend **SB 645** as follows:

(1) Delete SECTION 13 in its entirety and renumber the subsequent sections accordingly.

(2) In SECTION 66, amend subsection (d), Section 403.021, Government Code on page 41, line 12 (committee printing) by replacing the word "may" with the word "shall."

(3) Delete SECTION 78 in its entirety and renumber the subsequent sections accordingly.

(4) In SECTION 79, amend Section 2101.0375(g) by adding a new subsection (3) as follows:

(3) "State agency" does not include:

(A) a state agency under the direct supervision and control of the governor, the secretary of state, the comptroller, the commissioner of the General Land Office, or the attorney general if the agency is not headed by a governing body;

(B) a state agency in the legislative or judicial branch of government;

(C) the Department of Agriculture; or

(D) the Railroad Commission of Texas.

(5) In SECTION 79, amend Section 2101.0376 by adding a new subsection (g) as follows:

(g) "State agency" does not include:

(A) a state agency under the direct supervision and control of the governor, the secretary of state, the comptroller, the commissioner of the

General Land Office, or the attorney general if the agency is not headed by a governing body;

(B) a state agency in the legislative or judicial branch of government;

(C) the Department of Agriculture; or

(D) the Railroad Commission of Texas.

Floor Amendment No. 6

Amend **SB 645** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION ___. Chapter 556, Government Code, is amended by adding Section 556.006 to read as follows:

Sec. 556.006. LEGISLATIVE LOBBYING. (a) A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure.

(b) This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.

SECTION ___. Section 556.002, Government Code, is amended to read as follows:

Sec. 556.002. EXCEPTION. Except for Section 556.006, this [~~This~~] chapter does not apply to an individual employed by the Department of Public Safety.

SECTION ___. The chapter heading to Chapter 556, Government code, is amended to read as follows:

CHAPTER 556. POLITICAL ACTIVITIES
BY STATE AGENCIES AND EMPLOYEES

Floor Amendment No. 7

Amend **SB 645** by adding the following section, appropriately numbered, and renumbering subsequent sections appropriately:

SECTION ____. Sections 659.044(b) and (c), Government Code, are amended to read as follows:

(b) The amount increases when the 10th, 15th, 20th, [~~and~~] 25th, 30th, 35th, and 40th years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 10th, 15th, 20th, [~~and~~] 25th, 30th, 35th, and 40th years of lifetime service credit are accrued.

Floor Amendment No. 8

Amend **SB 645** by adding new appropriately numbered sections of the bill to read as follows and by renumbering the remaining sections of the bill as appropriate:

SECTION ___. Chapter 772, Government Code, is amended by adding Section 772.0031 to read as follows:

Sec. 772.0031. HUMAN RESOURCE TASK FORCE. (a) The Human Resource Task Force is composed of a representative of:

(1) the governor's office, appointed by the governor;

(2) the state auditor's office, appointed by the state auditor;

(3) the comptroller's office, appointed by the comptroller;

(4) the attorney general's office, appointed by the attorney general;

(5) the Commission on Human Rights, appointed by the presiding officer of that agency;

(6) the Employees Retirement System of Texas, appointed by the presiding officer of the board of trustees of that agency;

(7) the Texas Workforce Commission, appointed by the presiding officer of that agency;

(8) the Texas Workers' Compensation Commission, appointed by the presiding officer of that agency;

(9) the Legislative Budget Board, appointed by the presiding officer of the board;

(10) the State Agency Coordinating Council, appointed by the presiding officer of that entity;

(11) the Texas Small State Agency Task Force, appointed by the presiding officer of that entity; and

(12) the Texas State Personnel Administrators' Association, appointed by the presiding officer of that entity; and

(13) each eligible state employee organization certified by the comptroller under Section 403.0165, who must be the chief elected representative of the organization.

(b) The representative of the State Agency Coordinating Council, the Texas Small State Agency Task Force, and the Texas State Personnel Administrators' Association serve as nonvoting members of the Human Resource Task Force.

(c) The representative of the governor's office serves as the presiding officer of the task force.

(d) The task force shall meet at the call of the presiding officer.

(e) A member of the task force is not entitled to compensation but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the task force, as provided by the General Appropriations Act. The appointing entity is responsible for the reimbursement of the entity's appointee.

(f) The member entities of the task force shall provide the staff for the task force.

(g) The task force shall:

(1) identify and develop strategies to coordinate personnel policies and information dissemination within state government;

(2) propose a method for the sharing and coordination of human resource training activities among state agencies; and

(3) develop a "best practices" personnel manual to assist state agencies in developing, adapting, and revising human resource policies and implementing new programs.

(h) Not later than December 1, 1998, the task force shall submit to the legislature a report on the task force's recommendations and a draft of the "best practices" personnel manual.

(i) This section expires and the Human Resource Task Force is abolished on September 1, 1999.

SECTION ___. Chapter 651, Government Code, is amended by adding Section 651.004 to read as follows:

Sec. 651.004. MANAGEMENT-TO-STAFF RATIOS. (a) A state agency shall develop procedures for use in achieving a management-to-staff ratio of one manager for each 11 staff members.

(b) In this section, "state agency" has the meaning assigned by Section 2052.101.

SECTION ___. Section 2052.103, Government Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) Not later than the last day of the first month following each quarter of the fiscal year, a state agency shall file with the state auditor a written report that provides for that fiscal quarter:

(1) the number of full-time equivalent state employees employed by the agency and paid from funds in the state treasury;

(2) the number of full-time equivalent state employees employed by the agency and paid from funds outside of the state treasury;

(3) the increase or decrease, if any, of the number of full-time equivalent employees from the fiscal quarter preceding the quarter covered by the report;

(4) the number of positions of the agency paid from funds in the state treasury;

(5) the number of positions of the agency paid from funds outside of the state treasury; [~~and~~] .

(6) the number of individuals who performed services for the agency under a contract, including consultants and individuals employed under contracts with temporary help services; and

(7) the number of managers, supervisors, and staff.

(b) The report must be made in the manner prescribed by the state auditor and include:

(1) an annotated organizational chart depicting the total number of full-time equivalent employees, without regard to the source of funds used to pay all or part of the salary of an employee, and the total number of managers, supervisors, and staff for each functional area in the state agency;

(2) the management-to-staff ratio for each functional area; and

(3) a separate organizational chart that summarizes the categories of employees in the agency's regional offices without regard to the source of funds used to pay all or part of the salary of an employee.

Floor Amendment No. 9

Amend **SB 645** by adding the following section to the bill, appropriately numbered, and renumbering the existing sections of the bill appropriately:

SECTION ___. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0141 to read as follows:

Sec. 403.0141. REPORT ON INCIDENCE OF TAX. (a) Before each regular session of the legislature, the comptroller shall report to the legislature and the governor on the overall incidence of the school district

property tax and any state tax generating more than 2.5 percent of state tax revenue in the prior fiscal year. The analysis shall report on the distribution of the tax burden for the taxes included in the report.

(b) At the request of the chair of a committee of the senate or house of representatives to which has been referred a bill or resolution to change the tax system that would increase, decrease, or redistribute tax by more than $20,000,000, the Legislative Budget Board with the assistance, as requested, of the comptroller shall prepare an incidence impact analysis of the bill or resolution. The analysis shall report on the incidence effects that would result if the bill or resolution were enacted.

(c) To the extent data is available, the incidence impact analysis under Subsections (a) and (b):

(1) shall evaluate the tax burden:

(A) on the overall income distribution, using a systemwide incidence measure or other appropriate measures of equality and inequality; and

(B) on income classes, including, at a minimum, quintiles of the income distribution, on renters and homeowners, on industry or business classes, as appropriate, and on various types of business organizations;

(2) may evaluate the tax burden:

(A) by other appropriate taxpayer characteristics, such as whether the taxpayer is a farmer, rancher, retired elderly, or resident or nonresident of the state; and

(B) by distribution of impact on consumers, labor, capital, and out-of-state persons and entities; and

(3) shall:

(A) use the broadest measure of economic income for which reliable data is available; and

(B) include a statement of the incidence assumptions that were used in making the analysis.

Floor Amendment No. 10

Amend **SB 645** by adding the following section to the bill, appropriately numbered, and renumbering the existing sections of the bill appropriately:

SECTION ____. Section 403.014, Government Code, is amended to read as follows:

Sec. 403.014. REPORT ON EFFECT OF CERTAIN TAX PROVISIONS. (a) Before each regular session of the legislature, the comptroller shall report to the legislature and the governor on the effect, if it is possible to assess, of exemptions, discounts, exclusions, special valuations, special accounting treatments, special rates, and special methods of reporting relating to:

(1) sales, excise, and use tax under Chapter 151, Tax Code;

(2) [~~, and exemptions from and special rates relating to~~] franchise tax under Chapter 171, Tax Code;

(3) school district property taxes under Title 1, Tax Code; and

(4) any other tax generating more than five percent of state tax revenue in the prior fiscal year.

(b) The report must include:

(1) an analysis of each special provision that reduces the amount of tax payable to include [~~and~~] an estimate of the loss of revenue for a six-year period including the current fiscal biennium and a citation of the statutory or legal authority for the provision; and

(2) for provisions reducing revenue by more than one percent of total revenue for a tax covered by this section, the effect of each provision on the distribution of the tax burden by income class and industry or business class, as appropriate.

(c) The report may include:

(1) an assessment of the intended purpose of the provision and whether the provision is achieving that objective; and

(2) a recommendation for retaining, eliminating, or amending the provision.

(d) The report may be included in any other report made by the comptroller.

(e) At the request of the chair of a committee of the senate or house of representatives to which has been referred a bill or resolution establishing, extending, or restricting an exemption, discount, exclusion, special valuation, special accounting treatment, special rate, or special method of reporting relating to any state tax, the Legislative Budget Board with the assistance, as requested, of the comptroller shall prepare a letter analysis of the effect on the state's tax revenues that would result from the passage of the bill or resolution. The letter analysis shall contain the same information as provided in Subsection (b), as appropriate.

(f) [~~(c)~~] The comptroller and Legislative Budget Board may request from any state officer or agency information necessary to complete the report or letter analysis. Each state officer or agency shall cooperate with the comptroller and Legislative Budget Board in providing information or analysis for the report or letter analysis.

Floor Amendment No. 11

Amend **SB 645** in Section 3 of the bill, in amended Section 2254.021(2), Government Code, (on page 2, line 13, House Committee Report version) by striking "$10,000" and substituting "$15,000 [~~$10,000~~]".

Floor Amendment No. 1 on Third Reading

Amend **SB 645** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION ____. Sections 2254.031(b) and (d), Government Code, are amended to read as follows:

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than $15,000 [~~$10,000~~].

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than $15,000 [~~$10,000~~].

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **SB 645**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1102 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1102** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1102** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to systems and programs administered by the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 805.002(g), Government Code, is amended to read as follows:

(g) To be eligible to make a transfer pursuant to Subsection (d), a person must be the same beneficiary under both retirement systems, except that if the only service credited in the system from which service is being transferred is reinstated service and no beneficiary designation was made at or after the time of reinstatement, the beneficiary in the receiving system may make the election.

SECTION 2. Sections 811.001(8) and (9), Government Code, are amended to read as follows:

(8) "Custodial officer" means a member of the retirement system who is employed by the institutional division or the state jail division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of the institutional division or inmates or defendants confined in the state jail division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institutional division or the state jail division. The term includes a member who transfers from the Texas Department of Criminal Justice to the managed health care unit of The

University of Texas Medical Branch or the Texas Tech University Health Sciences Center pursuant to Section 9.01, Chapter 238, Acts of the 73rd Legislature, Regular Session, 1993, elects at the time of transfer to retain membership in the retirement system, and is certified by the managed health care unit or the health sciences center as having a normal job assignment described by this subdivision.

(9) "Law enforcement officer" means a member of the retirement system who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, [~~the State Purchasing and General Services Commission, Capitol Area Security Force,~~] the State Board of Pharmacy, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

SECTION 3. Section 813.104, Government Code, is amended to read as follows:

Sec. 813.104. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d)~~] Except as provided by Subsection (c) [~~Subsection (c)~~], payments may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 813.201.

(c) Under a rule adopted under this section, the [~~(c) The~~] designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment of the service would result in the payment of a death benefit annuity or an increase in the amount of a death benefit annuity.

(d) [~~(f)~~] The payment for the establishment or reestablishment of service under Subsection (c) [~~Subsection (c)~~] must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(g) The retirement system may adopt rules to administer this section.~~]

SECTION 4. Section 813.106, Government Code, is amended to read as follows:

Sec. 813.106. SERVICE NOT PREVIOUSLY ESTABLISHED. The state shall make contributions for service not previously established that is established under Section 813.104 [~~or 813.105~~] in the amount provided by Section 813.202(c) [~~813.202(c)~~] for membership service or the amount provided by Section 813.302(d) for military service, as applicable. The state contributions will be made at the time the service credit is granted.

SECTION 5. Section 813.202, Government Code, is amended to read as follows:

Sec. 813.202. MEMBERSHIP SERVICE NOT PREVIOUSLY ESTABLISHED. (a) Except as provided by Section 813.402 [~~and Subsection (b)~~], any member may establish service credit in the retirement system for membership service not previously established.

(b) A [~~Membership service not previously credited because of a waiting period required before September 1, 1958, may be established only by a contributing member.~~

[~~(c) Except as provided by Subsection (d), a~~] member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 or 813.505, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

[~~(d) A member claiming credit for service not previously creditable because of a waiting period required before September 1, 1958, is exempt from the payment of interest on the required contribution if the member establishes the credit before the first anniversary of the person's becoming a member of the retirement system.~~]

(c) [~~(c)~~] The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. The state's contribution must be paid from the fund or account from which the member receives compensation at the time the service is established or, if the member does not hold a position at the time the service is established, from the fund or account from which the member received compensation when the member most recently held a position.

SECTION 6. Section 813.301(b), Government Code, is amended to read as follows:

(b) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 60 months of service credit in the retirement system for military service.

SECTION 7. Section 813.402, Government Code, is amended to read as follows:

Sec. 813.402. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE. (a) A [~~contributing~~] member may establish service credit in the elected class for any calendar year during any part of which:

(1) the member held an office included in that class; or

(2) the member was eligible to take the oath for an office included in that class.

(b) A [~~contributing~~] member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404, plus all membership fees due, plus interest computed at an annual rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

SECTION 8. Section 813.504, Government Code, is amended to read as follows:

Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. (a) A member of the employee class may reestablish service credit previously canceled in the retirement system if at least six months have elapsed since the end of the month in which the cancellation became effective [~~the member, after cancellation of the credit, holds a position for six months that is included in the employee class~~].

(b) A former member of the employee class who does not receive a disability retirement annuity from the retirement system but who presents evidence satisfactory to the retirement system that the person is disabled and cannot resume state employment may reestablish service credit previously canceled in the retirement system for the purpose of retiring with a service retirement annuity.

SECTION 9. Sections 813.506(a) and (c), Government Code, are amended to read as follows:

(a) The Texas Department of Criminal Justice, the managed health care unit of The University of Texas Medical Branch, and the Texas Tech Health Sciences Center by rule shall adopt standards for determining eligibility for service credit as a custodial officer, based on the need to encourage early retirement of persons whose duties are hazardous and require them to have routine contact with inmates of or defendants confined in the state jail division of the Texas Department of Criminal Justice on a regular basis.

(c) The Texas Department of Criminal Justice, the managed health care unit of The University of Texas Medical Branch, or the Texas Tech Health Sciences Center, as applicable, shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department or unit may not be appealed by an employee but is subject to change by the retirement system.

SECTION 10. Section 813.509(a), Government Code, is amended to read as follows:

(a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated sick leave and one month for each fraction of days or hours remaining after division of the total hours of accumulated sick leave by 160. [~~An increment of less than 20 days is not creditable.~~]

SECTION 11. Section 814.005(a), Government Code, is amended to read as follows:

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. The retirement system also shall give effect as a waiver to a full or partial disclaimer executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

SECTION 12. Section 814.104, Government Code, is amended to read as follows:

Sec. 814.104. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT. (a) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(2), a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity[~~, if the member~~]:

(1) if the member is at least 60 years old and has 5 years of service credit in the employee class; or

(2) if the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals the number 80 [~~is at least 55 years old and has 25 years of service credit in the retirement system; or~~

[~~(3) is at least 50 years old and has 30 years of service credit in the retirement system~~].

(b) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, [~~the State Purchasing and General Services Commission Capitol Area Security Force,~~] the State Board of Pharmacy, or the Parks and Wildlife Department, as an employee of the Railroad Commission of Texas who is licensed by the Commission on Law Enforcement Officer Standards and Education and has served at least five years as an investigator for the oil field theft detection division, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

SECTION 13. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1041 to read as follows:

Sec. 814.1041. TEMPORARY SERVICE RETIREMENT OPTION FOR MEMBERS AFFECTED BY PRIVATIZATION OR OTHER REDUCTION IN WORKFORCE. (a) This section applies only to members of the employee class whose positions with the Texas Workforce Commission, the Texas Department of Human Services, or the Texas Department of Mental Health and Mental Retardation are eliminated as a result of contracts with private service providers or other reductions in services provided by those agencies and who separate from state service at that time.

(b) A member described by Subsection (a) is eligible to retire and receive a service retirement annuity if the member's age and service credit, each increased by three years, would meet age and service requirements for

service retirement under Section 814.104(a) at the time the member separates from state service as described by Subsection (a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit increased by three years.

(c) A member described by Subsection (a) becomes eligible to retire and receive a service retirement annuity on the date on which the member would have met the age and service requirements for service retirement under Section 814.104(a) had the member remained employed by the state if, on the date of separation from state service, the member's age and service credit, each increased by five years, would meet age and service requirements for service retirement under Section 814.104(a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit.

(d) If a member described by Subsection (c) is reemployed by the state before retirement, the time between the member's separation from state service and reemployment may be used only to compute eligibility for service retirement and may not be used to compute the amount of any service retirement annuity.

(e) A member who applies to retire under this section and the state agency from which the member separated from service shall provide documentation required by the retirement system to establish eligibility to retire under this section.

(f) This section applies only to positions eliminated by privatization or other reductions in workforce before September 1, 1999.

SECTION 14. Section 814.105(a), Government Code, is amended to read as follows:

(a) Except as otherwise provided by this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed as the member's average monthly compensation for service in that class for the 36 highest months of compensation multiplied by 2.25 [~~2~~] percent for each year of service credit in that class.

SECTION 15. Section 814.1081(a), Government Code, is amended to read as follows:

(a) A person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1) or (c)(2)[~~, and who designated a person as beneficiary who was not at the time of designation and is not currently the retiree's spouse or child~~] may change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the retiree designated a person as beneficiary who:

(1) was not at the time of designation and is not currently the retiree's spouse or child; or

(2) has executed since the designation a transfer and release, approved by a court of competent jurisdiction pursuant to a divorce decree, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or child.

SECTION 16. Section 815.003(d), Government Code, is amended to read as follows:

(d) The board shall hold elections for the members and retirees to nominate and elect a trustee before August 31 [~~1~~] of each odd-numbered year. The board shall make ballots available to members of the retirement system and retirees and all votes must be cast on those ballots.

SECTION 17. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.106 to read as follows:

Sec. 815.106. INFORMATION TO LEGISLATURE. (a) The retirement system may not use any money under its control to influence the outcome of an election or to support the passage or defeat of legislation.

(b) This section does not prohibit the board of trustees, as fiduciaries of the trust fund and as trustees of other programs administered by the board, or the officers or employees of the retirement system, as designees of the board, from making recommendations to the legislature concerning the actuarial soundness of a retirement system administered by the board, the fiscal or legal implications of proposed legislation, or statutory changes designed to more efficiently administer and effectuate the purposes of a retirement system or other program administered by the board. In addition, the board or an officer or employee of the retirement system may provide to a member of the legislature or a legislative committee, at the request of the member or committee, any factual information that is not made confidential by law.

SECTION 18. Section 815.303(b), Government Code, is amended to read as follows:

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government securities in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

SECTION 19. Section 815.307, Government Code, is amended to read as follows:

Sec. 815.307. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code. [~~In making investments for the retirement system, the board of trustees or the executive director shall exercise the judgment and care, under the circumstances prevailing at the time~~

~~of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.~~]

SECTION 20. Section 815.403(a), Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to 7.4 percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 814.501;

(3) an amount for the law enforcement and custodial officer supplemental retirement fund equal to 2.13 percent of the aggregate state compensation of all custodial and law enforcement officers for that year;

(4) money necessary for the administration of the law enforcement and custodial officer supplemental retirement fund; and

(5) money for service credit not previously established, as provided by Section 813.202(c) [~~813.202(c)~~] or 813.302(d).

SECTION 21. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.5072 to read as follows:

Sec. 815.5072. EXCESS BENEFIT ARRANGEMENT. (a) A separate, nonqualified, unfunded excess benefit arrangement is created outside the trust fund of the retirement system. This excess benefit arrangement shall be administered as a governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)). The purpose of the excess benefit arrangement is to pay to annuitants of the retirement system benefits otherwise payable by the retirement system that exceed the limitations on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)).

(b) The board of trustees is responsible for the administration of this arrangement. Except as otherwise provided by this section, the board has the same rights, duties, and responsibilities concerning the excess benefit arrangement as it has to the trust fund.

(c) Benefits under this section are exempt from execution to the same extent as provided by Section 811.005, except that the benefits are completely unassignable. Contributions to this arrangement are not held in trust and may not be commingled with other funds of the retirement system.

(d) An annuitant is entitled to a monthly benefit under this section in an amount equal to the amount by which the benefit otherwise payable by the retirement system has been reduced by the limitation on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)). The benefit payable by this arrangement is payable at the times and in the form that the benefit payable under the trust fund is paid.

(e) The benefit payable under this section shall be paid from state contributions that otherwise would be made to the trust fund under

Section 815.403. In lieu of deposit in the state accumulation account, an amount determined by the retirement system to be necessary to pay benefits under this section shall be paid monthly to the credit of a dedicated account in the general revenue fund maintained only for the excess benefit arrangement. The account may include amounts needed to pay reasonable and necessary expenses of administering this arrangement. The monthly amount to be paid to the credit of the account shall be transferred to the account at least 15 days before the date of a monthly disbursement under this section.

(f) The board of trustees may adopt rules governing the excess benefit arrangement that are necessary for the efficient administration of the arrangement in compliance with Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)).

SECTION 22. Section 815.510(a), Government Code, is amended to read as follows:

(a) The Employees Retirement System of Texas shall submit a report not later than the 25th day of the month following the end of each fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, the executive director of the State Pension Review Board, the appropriate oversight committees of the house and senate, and the Legislative Budget Board. The report shall include the following:

(1) the current end-of-fiscal-year market value of the trust fund;

(2) ~~[the current book value of the trust fund;~~

[~~(3)~~] the asset allocations of the trust fund expressed in percentages of stocks, fixed income, cash, or other financial investments; and

(3) [~~(4)~~] the investment performance of the trust fund utilizing accepted industry measurement standards.

SECTION 23. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.512 to read as follows:

Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY. The executive director may cause a suit concerning a claim to be filed on behalf of the retirement system in a district court in Travis County to protect the system from double or multiple liability, if the executive director determines that a claim may expose the retirement system to such liability.

SECTION 24. (a) Annuities that are described by Section 814.107, 814.207, 814.305, or 814.601(a), Government Code, and are based on service retirements, disability retirements, or deaths that occurred or occur after August 31, 1996, but before September 1, 1997, are increased by 12.5 percent.

(b) The increase in annuities under Subsection (a) of this section is payable beginning with the first monthly payments of the annuities that become due after the effective date of this Act.

(c) Except as provided by Subsection (d) of this section, the board of trustees of the retirement system shall pay the increased annuities provided by this section from the retirement annuity reserve account of the retirement system and may transfer to that account from the state accumulation account of the retirement system any portion of the amount that exceeds the amount in the retirement annuity reserve account available to finance the increases in benefits, and that is actuarially determined to be necessary to finance the increases, for the duration of the annuities to which the increases apply.

(d) The increase in benefits payable to a law enforcement or custodial officer who retired before the age of 50 or for service established under Section 813.509, Government Code, is payable from the law enforcement and custodial officer supplemental retirement fund.

(e) The increase provided by Subsection (a) of this section shall be computed on the service percentage value described by Section 814.105(a), Government Code.

SECTION 25. The board of trustees of the Employees Retirement System of Texas shall authorize a supplemental payment under Section 814.603(d), Government Code, to be made in the fiscal year beginning September 1, 1997, if the conditions required by that subsection are met.

SECTION 26. Section 833.103(d), Government Code, is amended to read as follows:

(d) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 48 months of service credit in the retirement system for military service.

SECTION 27. Section 833.105, Government Code, is amended to read as follows:

Sec. 833.105. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) Except as provided by Subsection (c), payments [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d) Payments~~] may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 833.101.

(c) Under a rule adopted under this section, the designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment or reestablishment of the service would result in the payment of a death benefit annuity.

(d) The payment for the establishment or reestablishment of service under Subsection (c) must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(e) The retirement system may adopt rules to administer this section.~~]

SECTION 28. Subchapter A, Chapter 834, Government Code, is amended by adding Section 834.005 to read as follows:

Sec. 834.005. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 29. Section 834.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system[~~; the most recently performed of which was for a continuous period of at least one year~~];

(2) is at least 65 years old and has at least 12 years of service[~~; continuous or otherwise;~~] credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, [~~the most recently performed of which was for a continuous period of at least 10 years;~~] regardless of whether the member currently holds a judicial office.

SECTION 30. Section 834.302, Government Code, is amended to read as follows:

Sec. 834.302. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. (a) If a member eligible to select a death benefit plan under Section 834.301(a) dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary [~~surviving spouse~~] may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary [~~surviving spouse~~], the personal representative of the decedent's estate may make the selection.

(b) If a person dies who meets the description in Section 814.302(b), the person's designated beneficiary [~~surviving spouse~~] or the guardian of surviving minor children may select a death benefit plan under that subsection.

SECTION 31. Section 838.103(d), Government Code, is amended to read as follows:

(d) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 48 months of service credit in the retirement system for military service.

SECTION 32. Section 838.105, Government Code, is amended to read as follows:

Sec. 838.105. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) Except as provided by Subsection (c), payments [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d) Payments~~] may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 838.101.

(c) Under a rule adopted under this section, the designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment or reestablishment of the service would result in the payment of a death benefit annuity.

(d) The payment for the establishment or reestablishment of service under Subsection (c) must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(e) The retirement system may adopt rules to administer this section.~~]

SECTION 33. Subchapter A, Chapter 839, Government Code, is amended by adding Section 839.004 to read as follows:

Sec. 839.004. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 34. Section 839.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system[~~; the most recently performed of which was for a continuous period of at least one year~~];

(2) is at least 65 years old and has at least 12 years of service[~~; continuous or otherwise,~~] credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, [~~the most recently performed of which was for a continuous period of at least 10 years,~~] regardless of whether the member currently holds a judicial office.

SECTION 35. Section 839.302, Government Code, is amended to read as follows:

Sec. 839.302. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. If a member eligible to select a death benefit plan under Section 839.301 dies without having made a selection or if a plan selected cannot be made effective, the member's designated beneficiary [~~surviving spouse~~] may select a plan in the same manner as if the member had made the

selection. If there is no designated beneficiary [~~surviving spouse~~], the personal representative of the decedent's estate may make the selection.

SECTION 36. Section 840.3012(b), Government Code, is amended to read as follows:

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government securities in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

SECTION 37. Section 840.303, Government Code, is amended to read as follows:

Sec. 840.303. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code. [~~In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.~~]

SECTION 38. Section 609.009, Government Code, is amended to read as follows:

Sec. 609.009. TRUST FOR [~~OWNERSHIP UNDER~~] 457 PLAN. An employee's deferred amounts and investment income under a 457 plan and the qualified investment products in which the amounts are invested are held in trust for the exclusive benefit of participants and their beneficiaries in accordance with Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457). For purposes of this section, custodial accounts and contracts described by Section 457 are treated as trusts. A trust does not have to be established before January 1, 1999, for a 457 plan in existence on *August 20, 1996* [~~*the property of the employing political subdivision or state agency, as appropriate, until the deferred amounts and investment income are distributed to the employee*~~].

SECTION 39. Sections 609.502(a) and (b), Government Code, are amended to read as follows:

(a) The board of trustees of the Employees Retirement System of Texas is the trustee and the plan administrator of a 401(k) plan known as TexaSaver established under this subchapter.

(b) The board of trustees is the trustee and the plan administrator of a 457 plan established under this subchapter.

SECTION 40. Section 609.509(b), Government Code, is amended to read as follows:

(b) In a contract under Subsection (a), the board of trustees may provide for the board to audit periodically the person with whom the contract is made. The audit may cover:

(1) the proper handling and accounting of state or trust funds; and

(2) other matters related to the proper performance of the contract.

SECTION 41. Section 609.512(b), Government Code, is amended to read as follows:

(b) The deferred compensation trust fund is in the state treasury. The fund is for the benefit of the deferred compensation plan described by Section 609.502(b) [~~609.502(a)~~].

SECTION 42. Sections 3(a)(2), (8), and (9), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who has at least three years of service as an eligible employee with a department whose employees are authorized to participate in the Texas employees uniform group insurance benefits program and who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code;

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit, whose last state employment prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program;

(C) the optional retirement program established by Chapter 830, Government Code, and either receives an annuity or is eligible to receive an annuity under that program, if the [~~person's last state employment before retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program and if the~~] person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled as determined by the Employees Retirement System of Texas; or

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit.

(8) "Dependent" shall mean the spouse of an employee or retired employee and:

(A) an unmarried child under 25 years of age, including[~~: (A)~~] an adopted child and [~~(B)~~] a stepchild, foster child, or other child who is in a regular parent-child relationship;

(B) [~~and (C)~~] any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine; and

(C) any such child who is unmarried, regardless of age, for purposes of health benefits coverage under this Act, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

(9) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the Texas Department [~~State Board~~] of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of $1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the Texas Department [~~State Board~~] of Insurance;

(B) any corporation operating under Chapter 20 or 20A of the Insurance Code which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the Texas Department [~~State Board~~] of Insurance; or

(C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

SECTION 43. (a) Section 4B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) The trustee may delegate [~~the duties of the executive director under this section to another employee of the Employees Retirement System of Texas and may delegate~~] its duties to hear appeals to the executive director.

(b) Section 4B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 391, Acts of the 72nd Legislature, Regular Session, 1991, is redesignated as Section 4B(f) to read as follows:

(f) [~~(e)~~] The executive director may delegate the duties of the executive director under this section to another person who is employed by the Employees Retirement System of Texas.

SECTION 44. Section 4C(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may develop a system for an employee[~~, school district employee,~~] or annuitant to electronically authorize:

(1) enrollment in a coverage or benefit program;

(2) contributions to a coverage or benefit program; and

(3) deductions or reductions to the compensation or annuity of the employee[~~, school district employee,~~] or annuitant for participation in a coverage or benefit program.

SECTION 45. Sections 5(b), (h), (i), and (j), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) In the event the trustee shall select a [~~as the~~] carrier [~~one~~] whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the commissioner of insurance [~~State Board of Insurance~~]. Such deviating selection shall not be deemed final and binding unless and until the commissioner of insurance [~~a majority of the State Board of Insurance~~] has certified [~~its~~] approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the commissioner [~~State Board of Insurance~~] such deviating selection shall be deemed approved.

(h) In the event the trustee determines that benefits shall be provided from the Employees Life, Accident, and Health Insurance and Benefits Fund, the trustee may contract with one or more [~~a~~] qualified and experienced administering firms [~~firm~~] on a competitive bid basis to administer the plans of coverage [~~claims arising from the coverages~~] provided in Section 5 of the Act.

(i) The trustee shall select one or more [~~the desired~~] administering firms [~~firm~~] to provide services which shall be in the best interests of the employees covered by the Act. The trustee is not required to select the lowest bid but shall take into consideration such other factors as ability to service large group programs, past experience, and other relevant criteria. Should the trustee select a firm whose bid was not the lowest or one whose bid differs from that specified, the reasons for such action shall be fully justified and explained in the minutes of the next meeting of the trustee.

(j) The trustee may not contract for or provide a plan of [~~group~~] coverage [~~or with a health maintenance organization or provide coverage directly from the fund~~] that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any [~~other~~] physical illness.

SECTION 46. Section 5A(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may define the basic coverage in which every full-time employee and every annuitant participates unless participation is specifically waived. The trustee may define different basic coverage plans for active full-time employees and for annuitants. Basic coverage must include basic health coverage. Basic health coverage may be offered through any health benefits plan. [~~Basic coverage shall include, but not be limited to, benefits and health care service required by state and federal law.~~]

SECTION 47. Section 9, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 9. ANNUAL ACCOUNTING; SPECIAL CONTINGENCY RESERVE. (a) A carrier [~~Carriers~~] providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the carrier's [~~insurers'~~] allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing a participating [~~the~~] policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

SECTION 48. Section 10(b), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(b) Policies [~~Exemption from Taxes on Premiums. Premiums or contributions on policies~~], insurance contracts, certificates of coverage, evidence of coverage, and agreements with health maintenance organizations and plan administrators, or any other coverages established under this Act, [~~or other coverages~~] shall not be subject to any state tax, regulatory fee, or surcharge, including premium or maintenance taxes or fees.

SECTION 49. Section 11, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsections (d) and (e) to read as follows.

(d) In addition to the authority granted under Article 3.50-6, Insurance Code, the trustee may adopt rules to provide for payment of accelerated life insurance benefits to a terminally ill, terminally injured, or permanently disabled participant in amounts that benefit the participants without increasing the cost of providing the benefits. The amount of any payment of an accelerated benefit under rules adopted under this subsection must be deducted from the amount that would otherwise be payable as a death benefit.

(e)(1) In addition to retiree basic term life insurance coverage, a participant in the optional group term life insurance program may maintain optional term life insurance coverage after retirement. The trustee may adopt rules for the implementation and administration of this subsection.

(2) A participant may maintain after retirement the amount of optional term life insurance coverage on the participant's life on the date of retirement, not to exceed two times the participant's annual salary on the last September 1 before retirement and subject to benefit reduction factors based on age as determined by the trustee. The trustee shall determine the rate for retiree optional term life insurance coverage. The rate must be comparable to the rate for optional term life insurance coverage for an active employee of the same age. Alternatively, a retiree may choose another minimum optional term life insurance coverage amount not subject to benefit reduction factors based on age, with a coverage amount and premium rate determined by the trustee.

(3) A retiree participating in optional term life insurance coverage is not eligible for premium-waived extended insurance benefits or accelerated life insurance benefits if the total disability or terminal condition, respectively, begins after the date of retirement. Accidental death and dismemberment insurance coverage ceases on the date of retirement, regardless of age.

(4) A participant who retired on or after December 31, 1995, but before September 1, 1997, and who elected at the time of retirement to continue the maximum optional term life insurance amount available to a retiree at the time, may reinstate, prospectively, the level of optional group term life insurance in force on the participant's life immediately before the participant's retirement, not to exceed the maximum coverage set for retirees in Subdivision (2) of this subsection. This subdivision expires December 31, 1997.

SECTION 50. Section 12, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) The trustee shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code.

SECTION 51. Sections 13(b) and (c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) Unless participation is waived specifically or unless an employee or employee-annuitant is expelled from the program under Section 13A of this Act, every full-time employee except one who is described by Section 3(a)(5)(A)(x) of this Act shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible, and each policy of insurance purchased by the trustee shall provide for such automatic coverage.

(c) Unless expelled from the program under Section 13A of this Act, each part-time employee and each employee of an institution of higher education who is described by Section 3(a)(5)(A)(x) [~~3(a)(5)(A)(viii)~~] of this Act is eligible for participation in the group programs provided under this Act upon execution of appropriate application for coverage [~~payroll deduction authorization for the required payment of premiums~~]. An institution of higher education shall, at the time of employment, notify each employee of the institution who is described by Section 3(a)(5)(A)(x) [~~3(a)(5)(A)(viii)~~] of this Act of the employee's eligibility to participate in the group programs provided under this Act.

SECTION 52. Section 13A(f), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(f) An employee, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not participate in any [~~a health maintenance organization or be insured under any insurance or benefits~~] plan of coverage offered by the program for a period determined by the trustee of not more than five years from the date the expulsion from the program takes effect.

SECTION 53. Sections 15(b), (c), and (d), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) The state shall contribute to the cost of each employee's individual and dependent group coverages the amounts appropriated for the coverages in the General Appropriations Act. The governing board of each state department and institution of higher education participating in the program established under this Act shall pay the trustee a like amount for each employee's individual or dependent group coverages for their employees who are, and retirees who were, compensated from funds not appropriated in the General Appropriations Act. The departments and institutions shall include the required contributions from funds not appropriated in the General Appropriations Act in their annual operating budgets. Each state department and institution of higher education participating in the program shall assure current participant coverages based on the records of the trustee, make timely payments of amounts due the trustee from all fund sources under the control

of the department or institution, and reconcile trustee and agency records of coverages and payments monthly. There [~~From and after the effective date of this Act, there~~] is hereby allocated [~~and appropriated~~] to the trustee, in accordance with the provisions of this Act, from the several funds from which [~~state~~] employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated [~~and appropriated~~] by the state, including institutions of higher education, to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all [~~state~~] employees during said year; provided, however, that in the event said estimate of the contributions of the [~~state~~] employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments and institutions of higher education participating in the program established under this Act who provide contributions for their employees' individual and dependent coverages [~~employees~~] from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts required [~~needed~~] to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

SECTION 54. Sections 18(a) and (b), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(a) The group benefits advisory committee is composed of 26 [~~27~~] voting members as provided by this section. The office of the attorney general, [~~the office of the state treasurer,~~] the office of the comptroller, the Railroad Commission of Texas, the General Land Office, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the state agency or elected by and from the employees of the agency, as determined by rule by the governing body of the agency. One employee shall be elected from each of the remaining eight largest state agencies that are governed by appointed officers by and from the employees of those agencies. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be an expert in employee benefit issues from the private sector, appointed by the governor. One member shall be an expert in employee benefits issues from the private sector, appointed by the lieutenant governor. One member shall be a retired state employee appointed by the trustee. One member shall be a state employee of a state agency other than one of the eight largest state agencies, appointed by the trustee. Not more than one employee from a particular state agency may serve on the committee. Each of the seven largest institutions of higher education, as determined by the number of employees on the payroll of an institution, shall elect one

member of the committee from among persons who have each been nominated by a petition signed by at least 300 employees. Two members shall be employees of institutions of higher education, other than the seven largest institutions of higher education, who are appointed by the Texas Higher Education Coordinating Board, but not more than one employee shall be from any one institution. The members shall elect a presiding officer from their membership to serve a one-year term.

(b) All members of the committee shall be appointed or elected for three-year terms. During a term of appointment or election, state employee vacancies shall be filled by an employee of the same agency from which the vacancy occurred[~~, being~~] appointed by the governing body of the agency or institution [~~trustees~~] for the balance of the vacated term. A vacancy in a position held by a member of the private sector shall be filled by the officer who originally made the appointment to that position.

SECTION 55. Section 19, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Any employee or annuitant shall be entitled to secure for his dependents any uniform group coverages provided for employees under this Act, as shall be determined by the trustee, except that a foster child is eligible for health insurance coverage only if the child is not covered by another governmental health program. If an employee or annuitant resides outside of a health maintenance organization service area, the uniform group coverages must be made available to a dependent without evidence of insurability if the employee or annuitant applies for the coverage for the dependent during the annual enrollment period. Payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits, or the employee's salary shall be reduced in the appropriate amount, in such manner and form as the trustee shall determine.

(d) A dependent child who is unmarried and whose coverage under this Act ceases when the child reaches the age of 25 may, on expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, reinstate health benefits coverage under this Act, if the child, or the child's participating parent, pays the full cost of the health benefits coverage. A state contribution is not payable for coverage described by this subsection. Coverage under this subsection ceases at the end of the month in which the child marries.

SECTION 56. Section 659.102, Government Code, is amended to read as follows:

Sec. 659.102. DEDUCTION FOR SUPPLEMENTAL OPTIONAL BENEFITS PROGRAM. (a) An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program.

(b) The Employees Retirement System of Texas shall designate supplemental optional benefits programs that are eligible under this section and that promote the interests of the state and state agency employees. In

addition, institutions of higher education as defined by Section 61.003, Education Code, or institutions as defined by Section 3(a)(7), Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), may approve employee-funded dental plans as an optional benefits program for their employees under this section.

(c) The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, or prepaid legal services.

SECTION 57. (a) Sections 803.403, 813.105, 833.106, 838.103(i), and 838.106, Government Code, are repealed.

(b) Section 5(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is repealed.

SECTION 58. (a) The change in law made by this Act in Sections 811.001(9) and 814.104(b), Government Code, is intended to reflect the current law providing for the commissioning and administration of the Capitol area security force by the Department of Public Safety. Service credit previously accrued by a member of the Capitol area security force as a commissioned law enforcement officer of the General Services Commission, or a predecessor agency, remains credited as service by a law enforcement officer unless canceled as otherwise provided by Subtitle B, Title 8, Government Code.

(b) An employee of the Texas Education Agency whose membership was transferred from the Teacher Retirement System of Texas to the Employees Retirement System of Texas under Section 43, Chapter 812, Acts of the 73rd Legislature, Regular Session, 1993, who was a retiree of the Employees Retirement System of Texas at the time of the transfer, and who continued to make contributions to the Teacher Retirement System of Texas after the transfer may remain as a member of the Teacher Retirement System of Texas exempt from the transfer that occurred in 1993.

SECTION 59. This Act takes effect September 1, 1997.

SECTION 60. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 1102** as follows:

Delete SECTION 56 and renumber the remaining sections accordingly.

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **SB 1102**.

On motion of Senator Armbrister and by unanimous consent, the motion to concur in the House amendments to **SB 1102** was withdrawn.

Question—Shall the Senate concur in the House amendments to **SB 1102**?

SENATE BILL 1907 WITH HOUSE AMENDMENT

Senator Bivins called **SB 1907** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1907** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to tuition and fees charged by public institutions of higher education, including the redesignation of certain fees as tuition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TUITION AND FEES

SECTION 1.01. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0513 to read as follows:

Sec. 54.0513. REDESIGNATION OF BUILDING USE FEE. (a) The building use fee previously authorized in Section 55.16 of this code is redesignated as tuition.

(b) In addition to amounts that a governing board of an institution of higher education is authorized to charge as tuition under this chapter, the governing board is authorized to charge as tuition the following maximum amounts:

(1) $34 per semester credit hour for the 1997-1998 academic year;

(2) $36 per semester credit hour for the 1998-1999 academic year;

(3) $38 per semester credit hour for the 1999-2000 academic year; and

(4) $40 per semester credit hour for the 2000-2001 academic year and each academic year thereafter.

(c) Amounts collected by an institution of higher education under this section are institutional funds as defined by Section 51.009 of this code and shall be accounted for as designated funds. These funds shall not be accounted for in a general appropriations act in such a way as to reduce the general revenue appropriation to a particular institution.

(d) A governing board may waive all or part of the tuition charged to a student under this section if it finds that the payment of such tuition would cause an undue economic hardship on the student.

(e) Section 56.033 of this code requiring certain percentage amounts of tuition to be set aside for grants and scholarships does not apply to tuition collected under this section.

(f) A governing board of an institution of higher education may continue to charge as tuition under this section the amount that it charged as the building use fee at that institution in the 1996-1997 academic year without holding a public hearing, but may not increase tuition under this section above that amount without holding a public hearing.

SECTION 1.02. Subsection (i), Section 54.051, Education Code, is amended to read as follows:

(i) Tuition for a resident student registered at a law school is $80 [~~$75~~] per semester credit hour. Tuition for a nonresident student registered at a law school is the amount that can be charged a nonresident graduate student under Sections 54.008 and 54.051(d) of this code [~~$200 per semester credit hour~~].

SECTION 1.03. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.214 to read as follows:

Sec. 54.214. DISTANCE LEARNING OR OFF-CAMPUS COURSES. The governing board of an institution of higher education may waive a fee which it is authorized to charge if the board determines that:

(1) a student is enrolled only in distance learning courses or other off-campus courses of the institution;

(2) the student cannot reasonably be expected to use the activities, services, or facilities on which the fee is based; and

(3) the waiver of the fee will not materially impair the ability of the institution either to service any debt on which the fee is based or to offer or operate the particular activity, service, or facility supported by the fee.

SECTION 1.04. Section 55.01, Education Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:

(3) "Revenue funds" means the revenues, incomes, receipts, rentals, rates, charges, fees, grants, and tuition levied or collected from any public or private source by an institution of higher education, including interest or other income from those funds.

(4) "Bonds" means bonds, notes, or credit agreements a board is authorized to enter into either by this title or by other laws.

SECTION 1.05. Section 55.16, Education Code, is amended to read as follows:

Sec. 55.16. BOARD RESPONSIBILITY [~~RENTALS, RATES, CHARGES, AND FEES~~]. (a) If [~~Each board shall be authorized to fix and collect rentals, rates, charges, and fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed the amount permitted by Subsection (b), except that those schools charging more than $6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if~~] bonds have been or are issued pursuant to [~~Section 55.17 of~~] this title [~~code~~], or secured or to be secured by a pledge of part or all of the board's revenue funds [~~a limited or unlimited use fee~~], and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged revenue funds [~~use fee~~] (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all such

pledged revenue funds [~~use fees~~] which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed the amount permitted by this title [~~Subsection (b)~~], then any necessary fees, tuition, rentals, rates, or other charges constituting revenue funds [~~such limited or unlimited use fee~~] shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide revenue funds sufficient for the payment of the principal of and interest on the bonds, regardless of any other provision or limitation provided by this title [~~of this section or the limitations contained herein~~].

(b) [~~A board may not charge rentals, rates, charges, and fees under this section in a total amount per semester credit hour that exceeds the tuition rate per semester credit hour for a resident student at a general academic teaching institution under Subchapter B, Chapter 54, for the academic year in which the rentals, rates, charges, and fees are charged.~~] A board is not required to charge students enrolled in different degree programs at the institution the same rentals, rates, charges, and fees under this section.

[~~(c) A board that charges a rental, rate, charge, or fee under this section may use the revenue for any purpose at the institution at which the revenue is collected, subject to the laws governing the institution and the board. This subsection does not decrease the authority of a board of regents to enter into pledges or covenants with respect to bonds, notes, or other obligations under law existing before the effective date of this subsection.~~

[~~(d) Before a board increases a rental, rate, charge, or fee collected under this section at an institution under the direction, management, and control of the board, the board or, if the board directs, the chief executive officer of the institution must hold a public hearing at the institution on the increase.~~]

SECTION 1.06. Subsection (d), Section 55.17, Education Code, is repealed.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Section 55.24, Education Code, is amended to read as follows:

Sec. 55.24. PLEDGES UNDER PREVIOUS LAWS TO REMAIN IN EFFECT.

(a) Where any revenues, income, receipts, or other resources of any board have been pledged to the payment of principal of and interest on any bonds or notes issued and delivered pursuant to any other law, the repeal of such law by virtue of the enactment of Title 3 of this code shall not affect any such pledge or any covenants with respect to such bonds or notes, or any bonds issued to refund same, and all such pledges and covenants shall remain in full force and effect in accordance with the terms and provisions thereof.

(b) Where all or any part of the revenue funds of any board have been pledged to the payment of the principal of and interest on any bonds or notes or any other obligation issued or entered into and delivered pursuant to any provision of this title or any other law, the repeal or amendment of any provision of this title shall not affect any such pledge or any covenants with respect to such bonds, notes, or obligations or any bonds or notes issued to refund same, and all such pledges and covenants shall remain in full force and effect in accordance with the terms and provisions thereof.

(c) In furtherance of the provisions of Subsection (b) and in recognition that certain boards have outstanding bonds, notes, and other obligations secured by various liens on the tuition or a portion of the tuition charged and collected at certain institutions and that the provisions of Chapter 54 would make it difficult or impossible to identify and secure that portion of the revised tuition charges pledged to the payment of such bonds, notes, and obligations, net tuition, as defined in Section 51.009(c) and classified as educational and general funds by such provision, shall be set aside and utilized first to satisfy the obligations of each board secured by tuition in the order of priority of the liens on such funds. It is further provided for the benefit of the owners of such bonds and notes and the counter parties to such obligations of the boards that the charges per semester credit hour or for each semester or summer session, as the case may be, for tuition constituting the educational and general funds portion of tuition shall never be less than the amount charged for the 1996-1997 academic year.

SECTION 2.02. Chapter 55, Education Code, is amended by adding Section 55.25 to read as follows:

Sec. 55.25. APPLICABILITY OF OTHER LAW; CONFLICTS. Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes) apply to all bonds issued pursuant to this chapter; provided, however, that in the event of any conflict between such laws and this chapter, the provisions of this chapter prevail.

ARTICLE 3. VALIDATION, SAVINGS, AND TRANSITIONAL PROVISIONS; EFFECTIVE DATE; EMERGENCY

SECTION 3.01. (a) All revenue bonds heretofore approved by the attorney general and registered by the comptroller, or authorized by proceedings approved by the attorney general, which were issued, sold, and delivered or entered into by any board, and which are payable from or secured by a pledge of any revenues, income, receipts, or other resources of such board, are hereby validated in all respects, together with all proceedings authorizing the issuance thereof, and said bonds and proceedings are and shall be valid and binding obligations in accordance with their terms and conditions for all purposes, as though they had been duly and legally issued or entered into and authorized originally.

(b) Nothing in this Act limits or impairs any pledge or covenant made by the governing board of an institution of higher education with respect to any bond or note issued before the effective date of this Act.

(c) The provisions of Subsection (b), Section 55.24, Education Code, as added by Section 2.01 of this Act, regarding the effect of an amendment or a repeal on a pledge or covenant made by the governing board of an institution of higher education, apply to any such amendment or repeal made by this Act.

SECTION 3.02. (a) This Act takes effect August 1, 1997, if this Act may take effect on that date under Section 39, Article III, Texas Constitution. Otherwise, this Act takes effect September 1, 1997.

(b) The changes in law made by this Act apply beginning with tuition and fees charged for the 1997 fall semester.

SECTION 3.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Bivins moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1907** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Sibley, Luna, Ratliff, and Barrientos.

SENATE BILL 1355 WITH HOUSE AMENDMENTS

Senator Brown called **SB 1355** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1355** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of retail stores; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. MISCELLANEOUS DUTIES OF COMPTROLLER

Sec. 403.321. INTERAGENCY TASK FORCE ON TEXAS RETAIL FOOD STORE REGULATION. (a) An interagency task force is created to advise and assist the comptroller on coordinating state agency regulation of retail food stores.

(b) The office of the comptroller is the lead agency for the task force and shall administer the activities of the task force.

(c) The task force is composed of a representative of:

(1) the Department of Agriculture, appointed by the commissioner of agriculture;

(2) the Texas Department of Commerce, appointed by the executive director of the department;

(3) the Texas Department of Health, appointed by the commissioner of public health;

(4) the Parks and Wildlife Department, appointed by the executive director of the department;

(5) the comptroller, appointed by the comptroller;

(6) the Texas Alcoholic Beverage Commission, appointed by the administrator of the commission;

(7) the Texas Retailer's Association, appointed by the association;

(8) the Texas Food Industry Association, appointed by the association;

(9) the Texas Petroleum Marketers and Convenience Stores Association, appointed by the association;

(10) a rural local health department, appointed by the governor;

(11) an urban local health department, appointed by the governor;

(12) consumers, appointed by Consumers Union;

(13) rural consumers, appointed by the comptroller; and

(14) urban consumers, appointed by the comptroller.

(d) A licensing and regulatory agency shall make available to the task force information considered necessary by the task force.

(e) The task force may invite representatives of state agencies, consumer groups, or business groups to participate in the activities of the task force.

(f) The task force shall:

(1) elect a presiding officer and an assistant presiding officer;

(2) study the regulation of retail food stores; and

(3) report to the legislature regarding the task force's study of the regulation of retail food stores.

(g) The task force shall consider and include in the report required by Subsection (f)(3) the task force's recommendations concerning:

(1) state agencies' procedures for:

(A) issuing original and renewal licenses and permits; and

(B) collecting and disbursing fees;

(2) opportunities to consolidate state agencies' licensing and fee collection activities;

(3) integration of uniform product code price scanner inspection into the sales tax audit process;

(4) establishment of a consolidated retail food store application and licensing program to administer all licenses related to retail food stores;

(5) reduction of paperwork;

(6) reduction of any amount of time that scales and other equipment are out of service;

(7) continuation of adequate consumer protection;

(8) creation of private sector employment opportunities;

(9) opportunities to eliminate the Department of Agriculture's responsibilities for the inspection of eggs that are sold or offered for sale at retail in this state while ensuring that an egg producer in another state that sells eggs directly to a retail egg dealer in this state is held to the same standards as an egg producer in this state; and

(10) any other regulatory matter pertaining to a retail food store that a majority of the members of the committee considers advisable.

(h) This section expires June 1, 1999.

SECTION 2. Section 13.002, Agriculture Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), the [~~The~~] department shall enforce the provisions of this chapter and shall supervise all weights and measures sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter.

(c) The Texas State Board of Pharmacy shall enforce the provisions of this chapter relating to the compounding of drugs in pharmacies and shall supervise all weights and measures sold, offered for sale, or used in this state for the compounding of drugs in pharmacies.

SECTION 3. Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4041 to read as follows:

Sec. 13.4041. BUSINESS OPPORTUNITY INFORMATION. The Texas Department of Commerce shall cooperate with the department to:

(1) disseminate information regarding business opportunities available to a person who performs tests of the accuracy of weighing or measuring devices in this state; and

(2) develop markets for providers of testing services that test the accuracy of weighing or measuring devices in this state.

SECTION 4. Effective September 1, 1999, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4042 to read as follows:

Sec. 13.4042. PRIVATE TESTING REQUIREMENT. (a) Employees of the department or by interagency contract employees of other state agencies acting on behalf of the department may not perform more than 50 percent of the inspections or tests required by law of the accuracy of weighing or measuring devices in this state.

(b) Subsection (a) does not prohibit an agent of the department from performing an inspection or a test of the accuracy of a weighing or measuring device in this state.

(c) This section expires September 1, 2001.

SECTION 5. Effective September 1, 2001, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4043 to read as follows:

Sec. 13.4043. PRIVATE TESTING REQUIREMENT. (a) Employees of the department or by interagency contract employees of other state agencies acting on behalf of the department may not perform more than 25 percent of the inspections or tests required by law of the accuracy of weighing or measuring devices.

(b) Subsection (a) does not prohibit an agent of the department from performing an inspection or test of the accuracy of a weighing or measuring device in this state.

SECTION 6. Effective September 1, 1999, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4044 to read as follows:

Sec. 13.4044. PHARMACY PRIVATE TESTING REQUIREMENTS. (a) Employees of the Texas State Board of Pharmacy may not perform more than 50 percent of any inspections or tests necessary under Section 13.002(c).

(b) Subsection (a) does not prohibit an agent of the Texas State Board of Pharmacy from performing an inspection or a test of the accuracy of a weighing or measuring device necessary under Section 13.002(c).

(c) This section expires September 1, 2001.

SECTION 7. Effective September 1, 2001, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4045 to read as follows:

Sec. 13.4045. PHARMACY PRIVATE TESTING REQUIREMENTS. (a) Employees of the Texas State Board of Pharmacy may not perform more than 25 percent of any inspections or tests necessary under Section 13.002(c).

(b) Subsection (a) does not prohibit an agent of the Texas State Board of Pharmacy from performing an inspection or a test of the accuracy of a weighing or measuring device necessary under Section 13.002(c).

SECTION 8. Subchapter A, Chapter 47, Parks and Wildlife Code, is amended by adding Section 47.0113 to read as follows:

Sec. 47.0113. MEMORANDUM OF AGREEMENT. (a) The department shall initiate negotiations for and enter into a memorandum of agreement with the Texas Department of Health to consolidate the license and permit application process for retail food stores that sell aquatic products.

(b) The memorandum must be adopted by the Texas Board of Health and the commission.

(c) After the commission and the Texas Board of Health have adopted a memorandum of agreement, the department shall publish the memorandum of agreement in the Texas Register.

(d) The memorandum of agreement must provide that the Texas Department of Health shall:

(1) collect information to identify each retail food store that sells aquatic products as a part of a food retailing business and provide that information to the department; and

(2) perform routine inspections regarding the source of aquatic products.

SECTION 9. Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Automotive fuel rating" has the meaning assigned by 15 U.S.C. Section 2821.

(2) "Dealer" has the meaning assigned by Section 153.001, Tax Code [~~means a person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel tanks of motor vehicles or motor boats~~].

(3) "Distributor" has the meaning assigned by Section 153.001, Tax Code.

(4) [~~(2)~~] "Motor fuel" has the meaning assigned [~~given that term~~] by Section 153.001, Tax Code.

(5) "Supplier" has the meaning assigned by Section 153.001, Tax Code.

Sec. 2. TESTING. In order to determine compliance with the standards and for the enforcement of rules adopted under Sections 3, 3A, 3B, 4, and 5 of

this Act, the commissioner of agriculture [~~comptroller of public accounts or an authorized representative of the comptroller, any law enforcement officer at the direction of a prosecuting attorney, or the attorney general~~] may test any motor fuel sold in this state, with or without a complaint about the fuel. The commissioner may adopt rules relating to the frequency of testing of motor fuels. In adopting rules relating to the frequency of testing of motor fuels, the commissioner shall consider the nature of the violation, history of past violations, and funds available as provided by Section 9(e) of this Act.

Sec. 3. POSTING NOTICE OF SALE OF ALCOHOL AND MOTOR FUEL MIXTURE. (a) A [~~motor fuel~~] dealer in this state may not sell or offer for sale any motor fuel from a motor fuel pump that is supplied by a storage tank into which motor fuel containing ethanol in a mixture in which one percent or more of the mixture measured by volume is ethanol or into which motor fuel containing methanol in a mixture in which one percent or more of the mixture measured by volume is methanol has been delivered within the 60-day period preceding the day of sale or offer of sale, unless the dealer prominently displays on the pump from which the mixture is sold a sign that complies with the requirements of Subsection (b) of this section.

(b)(1) The sign required under Subsection (a) of this section must be displayed on each face of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed. The sign must state "Contains Ethanol" or "Contains Methanol," as applicable. The sign must appear in contrasting colors with block letters at least one-half inch in height and one-fourth inch in width and shall be displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(2) In addition to the requirements of Subsection (b)(1) of this section, if a motor fuel pump is supplied by a storage tank into which motor fuel containing 10 percent or more ethanol by volume or five percent or more methanol by volume has been delivered within the 60-day period preceding the day of the sale or offer of sale, the sign shall state the percentage of ethanol or methanol by volume, to the nearest whole percent, of the motor fuel having the highest percentage of ethanol or methanol delivered into that storage tank within the 60-day period. This subsection does not prohibit the posting of other alcohol or additive information, the information and posting being subject to regulations by the commissioner of agriculture.

Sec. 3A. SALE OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING POSTED ON PUMP LABEL. A dealer may not sell or offer for sale motor fuel from a motor fuel pump if the motor fuel has an automotive fuel rating that is lower than the automotive fuel rating for that motor fuel posted on the pump.

Sec. 3B. DELIVERY OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING CERTIFIED BY TRANSFER. A distributor or supplier may not deliver or transfer motor fuel to a dealer if the fuel has an automotive fuel rating that is lower than the certification of the automotive fuel rating the distributor or supplier is required to make to the motor fuel dealer under federal law.

Sec. 4. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. (a) A distributor, supplier, wholesaler, or jobber of motor fuel, as those

persons are defined by Section 153.001, Tax Code, may not make a delivery of motor fuel containing ethanol or methanol if the ethanol or methanol in the motor fuel mixture exceeds one percent by volume, other than a delivery made into the fuel supply tanks of a motor vehicle, to any outlet in this state unless the person delivers to the outlet receiving the delivery at the time of the delivery of the mixture:

(1) the sign described in Section 3 of this Act in sufficient quantities for the dealer receiving the motor fuel mixture to comply with the requirements of this Act; and

(2) a manifest, bill of sale, bill of lading, or any other document evidencing delivery of the motor fuel containing ethanol or methanol, which shall include a statement showing the percentage of ethanol or methanol contained in the mixture delivered, and the types and percentages of associated cosolvents, if any, contained in the mixture delivered. The document shall also show delivery of the sign or signs, as applicable, required to be delivered by this subsection.

(b) On the request of any motor fuel user, a dealer must reveal the percentage of ethanol contained in motor fuel being sold, the percentage of methanol contained in motor fuel being sold, and, if the motor fuel contains methanol, the types and percentages of associated cosolvents contained in the motor fuel being sold.

(c) The commissioner of agriculture [~~comptroller~~] by rule may prescribe the form of the statement required by Subsection (a) of this section.

(d) The signs required to be posted by a [~~motor fuel~~] dealer under Section 3 of this Act and delivered to a [~~motor fuel~~] dealer under this section shall be obtained from the commissioner of agriculture [~~comptroller~~].

(e) If the commissioner of agriculture [~~comptroller~~] determines that certain types of motor fuel, such as diesel or liquefied petroleum gas, are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation of those deliveries under this Act, the commissioner [~~comptroller~~] may limit the application of Section 3 of this Act and this section to motor fuels sold in sufficient quantity to warrant regulation.

Sec. 5. DEALER AND DELIVERY DOCUMENTS. (a) Each [~~motor fuel~~] dealer [~~in this state~~] shall keep for one year [~~four years~~] a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. During the first 60 days following delivery of a fuel mixture covered by this Act, the dealer shall keep at the station or retail outlet where the motor fuel was delivered a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. Each distributor, supplier, wholesaler, or jobber of motor fuel shall keep for one year [~~four years~~] at the principal place of business a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. The documents are subject to inspection by the commissioner of agriculture [~~comptroller or an authorized representative of the comptroller, any law enforcement officer, or the attorney general~~].

(b) The commissioner of agriculture [~~comptroller~~] by rule may prescribe the manner of filing documents required to be kept under Subsection (a) of this section, and the time, place, and manner of inspection of the documents.

Sec. 5A. DOCUMENTS RELATING TO POSTINGS OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at least one year a copy of:

(1) each delivery ticket or letter of certification on which the dealer based a posting of the automotive fuel rating of motor fuel contained in a motor fuel pump;

(2) records of any automotive fuel rating determination made by the dealer under 16 C.F.R. Part 306, as amended; and

(3) each delivery ticket or letter of certification that is required to be delivered to the dealer under 16 C.F.R. Part 306, as amended.

(b) Each distributor or supplier shall keep for at least one year at the principal place of business a copy of each delivery ticket or letter of certification required to be delivered by the distributor or supplier to a dealer under 16 C.F.R. Part 306, as amended.

(c) A document required to be kept under this section is subject to inspection by the commissioner of agriculture.

Sec. 6. CIVIL ACTION. (a) If a [~~motor fuel~~] dealer or a distributor, supplier, wholesaler, or jobber of motor fuel violates Section 3, 3A, 3B, 4, or 5 of this Act, any motor fuel user who has purchased the fuel and who has suffered damages or has a complaint about the product may maintain a civil action against the [~~motor fuel~~] dealer or the distributor, supplier, wholesaler, or jobber of motor fuel. The action may be brought, without regard to any specific amount in damages, in the district court in any county in which the [~~motor fuel~~] dealer, distributor, supplier, wholesaler, or jobber is doing business or in which the [~~motor fuel~~] user resides.

(b) In any action under this section, the court shall award to the motor fuel user who prevails the amount of actual damages and grant such equitable relief as the court determines is necessary to remedy the effects of the [~~motor fuel~~] dealer's violation or the distributor, supplier, wholesaler, or jobber's violation of the provisions of Section 3, 3A, 3B, 4, or 5 of this Act, including declaratory judgment, permanent injunctive relief, and temporary injunctive relief. In addition, the court shall award to the motor fuel user who prevails in an action brought hereunder court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(c) In addition to the remedies provided in Subsection (b) of this section, if the trier of fact finds that a [~~the~~] violation of Section 3, 3A, 3B, 4, or 5 of this Act was committed wilfully or knowingly by the defendant, the trier of fact shall award not more than three times the amount of actual damages.

(d) A violation of Section 3, 3A, 3B, 4, or 5 of this Act is also a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Any action alleging a violation of Section 3, 3A, 3B, 4, or 5 of this Act shall be commenced and prosecuted within two years after the date the cause of action accrued.

Sec. 7. CIVIL PENALTY. A [~~motor fuel~~] dealer or a distributor, supplier, wholesaler, or jobber of motor fuel who violates a provision of Section 3, 3A, 3B, 4, [~~or~~] 5, or 5A of this Act forfeits to the state a civil penalty of not less than $200 or [~~$25 nor~~] more than $10,000 [~~$200~~].

Sec. 7A. ADMINISTRATIVE PENALTY. (a) The commissioner of agriculture may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed $500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An employee of the Department of Agriculture designated by the commissioner to act under this section who determines that a violation has occurred may issue to the commissioner of agriculture a report that states the facts on which the determination is based and the designated employee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the designated employee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the designated employee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the designated employee, the commissioner of agriculture by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the designated employee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of agriculture a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of agriculture by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner of agriculture's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner of agriculture's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the designated employee by certified mail.

(l) A designated employee who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the designated employee may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner of agriculture:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty

and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 8. CRIMINAL OFFENSES AND PENALTIES. (a) A person commits an offense if the person intentionally or knowingly violates Section 3, 3A, 3B, 4, [~~or~~] 5, or 5A of this Act or any rule of the commissioner of agriculture [~~comptroller~~] prescribed to enforce or implement those sections of this Act.

(b) A person commits an offense if the person intentionally or knowingly:

(1) refuses to permit a person authorized by Section 2 of this Act to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this Act upon request of a person authorized to inspect such documents by Section 5 or 5A of this Act; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this Act or any rule prescribed by the commissioner of agriculture [~~comptroller~~] for the enforcement of this Act.

(c) An offense under Subsection (a) of this section is a Class C misdemeanor.

(d) An offense under Subsection (b) of this section is a Class B misdemeanor.

(e) The commissioner of agriculture may request a prosecuting attorney to prosecute a violation of this Act [~~A user, the comptroller or the comptroller's authorized representative, any law enforcement officer, or the attorney general may file a complaint under this section~~].

Sec. 9. RULES AND FEES. (a) The commissioner of agriculture [~~comptroller~~] may adopt rules not inconsistent with this Act for the regulation of the sale of motor fuels containing ethanol and methanol.

(b) The comptroller by rule may impose fees for testing, inspection, statement or record forms, sale of signs, or the performance of other services provided as determined necessary by the commissioner of agriculture in the administration of this Act.

(c) In addition to the fees authorized by Subsection (b) of this section, the comptroller by rule may impose a fee to be collected on a periodic basis determined by the comptroller from each distributor, supplier, wholesaler,

and jobber who deals in a motor fuel, without regard to whether the motor fuel is subject to regulation under this Act, as determined necessary by the commissioner of agriculture. The comptroller by rule shall prescribe the form for reporting and remitting the fees imposed by and under this section.

(d) The fees and penalties imposed by this Act or by a rule of the comptroller made pursuant to this Act shall be subject to the provisions of Chapter 111 and Sections 153.006, 153.007, and 153.401, Tax Code, except to the extent those sections are in conflict with this Act.

(e) The total amount of the fees collected annually under this Act may not exceed the lesser of:

(1) the costs of administering and enforcing the provisions of this Act as determined necessary by the commissioner of agriculture; or

(2) $500,000.

(f) The fees collected under this section may be used only:

(1) by the comptroller to defray the cost of collecting the fees and penalties imposed by this Act but may not exceed $25,000 annually; or

(2) by the commissioner of agriculture for the administration and enforcement of this Act [~~by the comptroller and shall be deposited in the Comptroller's Operating Fund 062~~].

Sec. 10. [~~Contracting for~~] ENFORCEMENT. The commissioner of agriculture shall enforce this Act and [~~comptroller~~] may not contract for the enforcement of this Act [~~after due notice~~].

Sec. 11. DELIVERY OF DOCUMENTS TO FEDERAL GOVERNMENT. The commissioner of agriculture may make a copy of a manifest, bill of sale, bill of lading, delivery ticket, letter of certification, or other document the commissioner may inspect under this Act. The commissioner may deliver a copy of a document made as provided by this section to the federal government for purposes of prosecuting a person for a violation of federal law relating to the sale or transfer of motor fuel.

Sec. 12. BUSINESS OPPORTUNITY INFORMATION. The Texas Department of Commerce shall cooperate with the Department of Agriculture to:

(1) disseminate information regarding business opportunities available to a person who performs automotive fuel rating tests; and

(2) develop markets for providers of automotive fuel rating testing services.

SECTION 10. Effective September 1, 1999, Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. PRIVATE TESTING REQUIREMENT. (a) Employees of the Department of Agriculture may not perform more than 50 percent of automotive fuel rating tests required by law.

(b) Subsection (a) does not prohibit an employee of the Department of Agriculture from performing an automotive fuel rating test.

(c) This section expires September 1, 2001.

SECTION 11. Effective September 1, 2001, Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended by adding Section 13A to read as follows:

Sec. 13A. PRIVATE TESTING REQUIREMENT. (a) Employees of the Department of Agriculture may not perform more than 25 percent of the automotive fuel rating tests required by law.

(b) Subsection (a) does not prohibit an employee of the Department of Agriculture from performing an automotive fuel rating test.

SECTION 12. Section 10.03, Chapter 419, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 10.03. TRANSITION: LICENSING. Subchapter H, Chapter 13, Agriculture Code, [~~as added by this Act,~~] relating to inspecting or testing of a weighing or measuring device, applies to a person on or after September 1, 1997 [~~only after the Department of Agriculture reasonably demonstrates to the Legislative Budget Board that the department's licensing programs for inspection and testing of liquefied petroleum gas meters and inspection and testing of ranch scales under Subchapters F and G, Chapter 13, Agriculture Code, respectively, will attain the performance goals established by the Legislative Budget Board~~].

SECTION 13. (a) This Act takes effect September 1, 1997.

(b) The changes in law made by Section 9 of this Act apply only to a delivery, transfer, or sale, as applicable, of motor fuel that occurs on or after September 1, 1997. A delivery, transfer, or sale of motor fuel that occurs before September 1, 1997, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) All rules adopted by the comptroller for the administration of Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), in effect on September 1, 1997, remain in effect until amended or repealed by the commissioner of agriculture.

(d) Before December 1, 1997, each entity named in Section 403.321, Government Code, as added by this Act, shall appoint a representative to serve as a member of the Interagency Task Force on Texas Retail Food Store Regulation.

(e) The Parks and Wildlife Department and the Texas Department of Health shall enter into the memorandum of agreement under Section 47.0113, Parks and Wildlife Code, as added by this Act, and shall assume their responsibilities as provided by this Act and the agreement before January 1, 1999.

(f) The Interagency Task Force on Texas Retail Food Store Regulation shall report to the legislature under Section 403.321, Government Code, as added by this Act, before January 1, 1999.

(g) The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2

Amend **CSSB 1355** as follows:

(1) Strike SECTIONS 6 and 7 of the bill (committee printing, page 5, line 23, through page 6, line 18).

(2) In SECTION 8 of the bill, proposed Section 47.0113, Parks and Wildlife Code (committee printing, page 7, lines 4-10), strike Subsection (d) and substitute the following:

(d) The memorandum of agreement must provide that the Texas Department of Health shall collect information to identify each retail food store that sells aquatic products as a part of a food retailing business and provide that information to the department.

(3) In SECTION 9 of the bill, proposed Section 7A(k)(1)(B), Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes) (committee printing, page 17, line 8), strike "board's" and substitute "commissioner of agriculture's".

(4) In SECTION 9 of the bill, proposed Section 7A(r), Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes) (committee printing, page 19, line 4), between "Code" and the period, insert the following:

", except as provided by Subsections (s) and (t) of this section.

(s) Notwithstanding Section 2001.058(e), Government Code, the commissioner of agriculture may change a finding of fact or conclusion of law made by the administrative law judge if the commissioner of agriculture:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law, department rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a department policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(t) The commissioner of agriculture shall state in writing the specific reason and legal basis for a determination under Subsection (s)".

(5) Renumber sections of the bill.

Floor Amendment No. 3

Amend **CSSB 1355** by inserting the following appropriately numbered SECTIONS and renumbering the remaining SECTIONS of the bill accordingly:

SECTION ___. The heading of Chapter 19, Business & Commerce Code, is amended to read as follows:

CHAPTER 19. FARM, INDUSTRIAL, OFF-ROAD CONSTRUCTION AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SECTION ___. Section 19.01, Business & Commerce Code, is amended by amending Subsections (5) and (8) to read as follows:

(5) "Dealer" means a person in the business of the retail sale of equipment. [~~The term does not include a person whose principal business is the sale of off-road construction equipment.~~]

(8) "Equipment" means farm tractors, farm implements, utility tractors, industrial tractors, off-road construction equipment, and outdoor power equipment and the attachments to or repair parts for those items.

SECTION _____. Section 19.43(a), Business & Commerce Code, is amended to read as follows:

(a) If on termination of a dealer agreement the dealer delivers to the supplier or a person designated by the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of the termination, the supplier shall pay to the dealer:

(1) the dealer cost of new, unsold, undamaged, and complete farm tractors, farm implements, utility tractors, industrial tractors, forklifts, material-handling equipment, outdoor power equipment, off-road construction equipment, and attachments returned by the dealer;

(2) an amount equal to 85 percent of the current price of new, undamaged repair parts returned by the dealer; and

(3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing, and loading of the parts, in which case no additional amount is required under this subdivision.

Amendment No. 4

Amend **CSSB 1355** as follows:

(1) On page 4, line 3, insert the following new section and renumber the subsequent sections appropriately:

SECTION 2. Sec. 438.034, Health and Safety Code, is amended to read as follows:

Sec. 438.034. EMPLOYEE CLEANLINESS. A person handling food or unsealed food containers shall:

(1) maintain personal cleanliness;

(2) wear clean outer garments;

(3) keep the person's hands clean; and

(4) either (A) wash the person's hands and exposed portions of their arms with soap and water before starting work, during work as often as necessary to avoid cross-contaminating food and to maintain cleanliness, after smoking, eating, and each visit to the toilet or (B) avoid bare-hand contact with exposed food by use of gloves or utensils and hand wash after smoking, eating, and each visit to the toilet. In no case shall a state or local authority require foodservice personnel avoid bare-hand contact with exposed food.

Floor Amendment No. 5

Amend **CSSB 1355** in the following respects:

(1) In line 14, page 1, strike the words "a representative" and insert, in lieu thereof, the word "representatives".

(2) In Line 15, page 2, change the period to a semicolon.

(3) Add the following after Line 15, page 2:

(15) vendors and suppliers to retail food stores, appointed by the comptroller and the commissioner of agriculture.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1355** on third reading in SECTION 1, Sec. 403.321(c), as amended by Floor Amendment No. 4, on second reading, by inserting the following after "of" and before the colon: "a representative of".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1355** on third reading as follows:

(1) On page 14, line 7, strike "dealer or a" and substitute "[~~a dealer or~~]".

(2) On page 14, line 11, after the period, insert "A dealer who knowingly violates a provision of Section 3, 3A, 3B, 4, 5, or 5A of this Act forfeits to the state a civil penalty of not less than $25 or more than $500.".

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1355** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Ellis, Lindsay, Haywood, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 3019

Senator Brown called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3019** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3019** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Bivins, Lindsay, Fraser, and Nixon.

SENATE BILL 1102 WITH HOUSE AMENDMENTS

Senator Armbrister again called **SB 1102** from the President's table for consideration of the House amendments to the bill.

Question—Shall the Senate concur in the House amendments to **SB 1102**?

The Presiding Officer again laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1102** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to systems and programs administered by the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 805.002(g), Government Code, is amended to read as follows:

(g) To be eligible to make a transfer pursuant to Subsection (d), a person must be the same beneficiary under both retirement systems, except that if the only service credited in the system from which service is being transferred is reinstated service and no beneficiary designation was made at or after the time of reinstatement, the beneficiary in the receiving system may make the election.

SECTION 2. Sections 811.001(8) and (9), Government Code, are amended to read as follows:

(8) "Custodial officer" means a member of the retirement system who is employed by the institutional division or the state jail division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of the institutional division or inmates or defendants confined in the state jail division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institutional division or the state jail division. The term includes a member who transfers from the Texas Department of Criminal Justice to the managed health care unit of The University of Texas Medical Branch or the Texas Tech University Health Sciences Center pursuant to Section 9.01, Chapter 238, Acts of the 73rd Legislature, Regular Session, 1993, elects at the time of transfer to retain membership in the retirement system, and is certified by the managed health care unit or the health sciences center as having a normal job assignment described by this subdivision.

(9) "Law enforcement officer" means a member of the retirement system who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, [~~the State Purchasing and General Services Commission, Capitol Area Security Force,~~] the State Board of Pharmacy, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

SECTION 3. Section 813.104, Government Code, is amended to read as follows:

Sec. 813.104. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d)~~] Except as provided by Subsection (c) [~~Subsection (c)~~], payments may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 813.201.

(c) Under a rule adopted under this section, the [~~(c) The~~] designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment of the service would result in the payment of a death benefit annuity or an increase in the amount of a death benefit annuity.

(d) [~~(f)~~] The payment for the establishment or reestablishment of service under Subsection (c) [~~Subsection (c)~~] must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(g) The retirement system may adopt rules to administer this section.~~]

SECTION 4. Section 813.106, Government Code, is amended to read as follows:

Sec. 813.106. SERVICE NOT PREVIOUSLY ESTABLISHED. The state shall make contributions for service not previously established that is established under Section 813.104 [~~or 813.105~~] in the amount provided by Section 813.202(c) [~~813.202(c)~~] for membership service or the amount provided by Section 813.302(d) for military service, as applicable. The state contributions will be made at the time the service credit is granted.

SECTION 5. Section 813.202, Government Code, is amended to read as follows:

Sec. 813.202. MEMBERSHIP SERVICE NOT PREVIOUSLY ESTABLISHED. (a) Except as provided by Section 813.402 [~~and Subsection (b)~~], any member may establish service credit in the retirement system for membership service not previously established.

(b) A [~~Membership service not previously credited because of a waiting period required before September 1, 1958, may be established only by a contributing member.~~

[~~(c) Except as provided by Subsection (d), a~~] member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 or 813.505, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

[~~(d) A member claiming credit for service not previously creditable because of a waiting period required before September 1, 1958, is exempt from the payment of interest on the required contribution if the member establishes the credit before the first anniversary of the person's becoming a member of the retirement system.~~]

(c) [~~(e)~~] The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. The state's contribution must be paid from the fund or account from which the member receives compensation at the time the service is established or, if the member does not hold a position at the time the service is established, from the fund or account from which the member received compensation when the member most recently held a position.

SECTION 6. Section 813.301(b), Government Code, is amended to read as follows:

(b) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 60 months of service credit in the retirement system for military service.

SECTION 7. Section 813.402, Government Code, is amended to read as follows:

Sec. 813.402. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE. (a) A [~~contributing~~] member may establish service credit in the elected class for any calendar year during any part of which:

(1) the member held an office included in that class; or

(2) the member was eligible to take the oath for an office included in that class.

(b) A [~~contributing~~] member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404, plus all membership fees due, plus interest computed at an annual rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

SECTION 8. Section 813.504, Government Code, is amended to read as follows:

Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. (a) A member of the employee class may reestablish service credit previously canceled in the retirement system if at least six months have elapsed since the end of the month in which the cancellation became effective [~~the member, after cancellation of the credit, holds a position for six months that is included in the employee class~~].

(b) A former member of the employee class who does not receive a disability retirement annuity from the retirement system but who presents evidence satisfactory to the retirement system that the person is disabled and cannot resume state employment may reestablish service credit previously canceled in the retirement system for the purpose of retiring with a service retirement annuity.

SECTION 9. Sections 813.506(a) and (c), Government Code, are amended to read as follows:

(a) The Texas Department of Criminal Justice, the managed health care unit of The University of Texas Medical Branch, and the Texas Tech Health Sciences Center by rule shall adopt standards for determining eligibility for service credit as a custodial officer, based on the need to encourage early retirement of persons whose duties are hazardous and require them to have routine contact with inmates of or defendants confined in the state jail division of the Texas Department of Criminal Justice on a regular basis.

(c) The Texas Department of Criminal Justice, the managed health care unit of The University of Texas Medical Branch, or the Texas Tech Health Sciences Center, as applicable, shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department or unit may not be appealed by an employee but is subject to change by the retirement system.

SECTION 10. Section 813.509(a), Government Code, is amended to read as follows:

(a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated sick leave and one month for each fraction of days or hours remaining after division of the total hours of accumulated sick leave by 160. [~~An increment of less than 20 days is not creditable.~~]

SECTION 11. Section 814.005(a), Government Code, is amended to read as follows:

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. The retirement system also shall give effect as a waiver to a full or partial disclaimer executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

SECTION 12. Section 814.104, Government Code, is amended to read as follows:

Sec. 814.104. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT. (a) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(2), a member who has service credit in

the retirement system is eligible to retire and receive a service retirement annuity[~~, if the member~~]:

(1) if the member is at least 60 years old and has 5 years of service credit in the employee class; or

(2) if the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals the number 80 [~~is at least 55 years old and has 25 years of service credit in the retirement system; or~~

[~~(3) is at least 50 years old and has 30 years of service credit in the retirement system~~].

(b) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, [~~the State Purchasing and General Services Commission Capitol Area Security Force,~~] the State Board of Pharmacy, or the Parks and Wildlife Department, as an employee of the Railroad Commission of Texas who is licensed by the Commission on Law Enforcement Officer Standards and Education and has served at least five years as an investigator for the oil field theft detection division, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

SECTION 13. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1041 to read as follows:

Sec. 814.1041. TEMPORARY SERVICE RETIREMENT OPTION FOR MEMBERS AFFECTED BY PRIVATIZATION OR OTHER REDUCTION IN WORKFORCE. (a) This section applies only to members of the employee class whose positions with the Texas Workforce Commission, the Texas Department of Human Services, or the Texas Department of Mental Health and Mental Retardation are eliminated as a result of contracts with private service providers or other reductions in services provided by those agencies and who separate from state service at that time.

(b) A member described by Subsection (a) is eligible to retire and receive a service retirement annuity if the member's age and service credit, each increased by three years, would meet age and service requirements for service retirement under Section 814.104(a) at the time the member separates from state service as described by Subsection (a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit increased by three years.

(c) A member described by Subsection (a) becomes eligible to retire and receive a service retirement annuity on the date on which the member would have met the age and service requirements for service retirement under Section 814.104(a) had the member remained employed by the state if, on the date of separation from state service, the member's age and service credit, each increased by five years, would meet age and service requirements for service retirement under Section 814.104(a). The annuity of a person who retires under this subsection is computed on the person's accrued service credit.

(d) If a member described by Subsection (c) is reemployed by the state before retirement, the time between the member's separation from state

service and reemployment may be used only to compute eligibility for service retirement and may not be used to compute the amount of any service retirement annuity.

(e) A member who applies to retire under this section and the state agency from which the member separated from service shall provide documentation required by the retirement system to establish eligibility to retire under this section.

(f) This section applies only to positions eliminated by privatization or other reductions in workforce before September 1, 1999.

SECTION 14. Section 814.105(a), Government Code, is amended to read as follows:

(a) Except as otherwise provided by this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed as the member's average monthly compensation for service in that class for the 36 highest months of compensation multiplied by 2.25 [2] percent for each year of service credit in that class.

SECTION 15. Section 814.1081(a), Government Code, is amended to read as follows:

(a) A person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1) or (c)(2)[~~, and who designated a person as beneficiary who was not at the time of designation and is not currently the retiree's spouse or child~~] may change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the retiree designated a person as beneficiary who:

(1) was not at the time of designation and is not currently the retiree's spouse or child; or

(2) has executed since the designation a transfer and release, approved by a court of competent jurisdiction pursuant to a divorce decree, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or child.

SECTION 16. Section 815.003(d), Government Code, is amended to read as follows:

(d) The board shall hold elections for the members and retirees to nominate and elect a trustee before August 31 [1] of each odd-numbered year. The board shall make ballots available to members of the retirement system and retirees and all votes must be cast on those ballots.

SECTION 17. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.106 to read as follows:

Sec. 815.106. INFORMATION TO LEGISLATURE. (a) The retirement system may not use any money under its control to influence the outcome of an election or to support the passage or defeat of legislation.

(b) This section does not prohibit the board of trustees, as fiduciaries of the trust fund and as trustees of other programs administered by the board, or the officers or employees of the retirement system, as designees of the board, from making recommendations to the legislature concerning the actuarial soundness of a retirement system administered by the board, the fiscal or legal

implications of proposed legislation, or statutory changes designed to more efficiently administer and effectuate the purposes of a retirement system or other program administered by the board. In addition, the board or an officer or employee of the retirement system may provide to a member of the legislature or a legislative committee, at the request of the member or committee, any factual information that is not made confidential by law.

SECTION 18. Section 815.303(b), Government Code, is amended to read as follows:

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government securities in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

SECTION 19. Section 815.307, Government Code, is amended to read as follows:

Sec. 815.307. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code. [~~In making investments for the retirement system, the board of trustees or the executive director shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.~~]

SECTION 20. Section 815.403(a), Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to 7.4 percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 814.501;

(3) an amount for the law enforcement and custodial officer supplemental retirement fund equal to 2.13 percent of the aggregate state compensation of all custodial and law enforcement officers for that year;

(4) money necessary for the administration of the law enforcement and custodial officer supplemental retirement fund; and

(5) money for service credit not previously established, as provided by Section 813.202(c) [~~813.202(c)~~] or 813.302(d).

SECTION 21. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.5072 to read as follows:

Sec. 815.5072. EXCESS BENEFIT ARRANGEMENT. (a) A separate, nonqualified, unfunded excess benefit arrangement is created outside the trust fund of the retirement system. This excess benefit arrangement shall be administered as a governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)). The purpose of the excess benefit arrangement is to pay to annuitants of the retirement system benefits otherwise payable by the retirement system that exceed the limitations on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)).

(b) The board of trustees is responsible for the administration of this arrangement. Except as otherwise provided by this section, the board has the same rights, duties, and responsibilities concerning the excess benefit arrangement as it has to the trust fund.

(c) Benefits under this section are exempt from execution to the same extent as provided by Section 811.005, except that the benefits are completely unassignable. Contributions to this arrangement are not held in trust and may not be commingled with other funds of the retirement system.

(d) An annuitant is entitled to a monthly benefit under this section in an amount equal to the amount by which the benefit otherwise payable by the retirement system has been reduced by the limitation on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)). The benefit payable by this arrangement is payable at the times and in the form that the benefit payable under the trust fund is paid.

(e) The benefit payable under this section shall be paid from state contributions that otherwise would be made to the trust fund under Section 815.403. In lieu of deposit in the state accumulation account, an amount determined by the retirement system to be necessary to pay benefits under this section shall be paid monthly to the credit of a dedicated account in the general revenue fund maintained only for the excess benefit arrangement. The account may include amounts needed to pay reasonable and necessary expenses of administering this arrangement. The monthly amount to be paid to the credit of the account shall be transferred to the account at least 15 days before the date of a monthly disbursement under this section.

(f) The board of trustees may adopt rules governing the excess benefit arrangement that are necessary for the efficient administration of the arrangement in compliance with Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)).

SECTION 22. Section 815.510(a), Government Code, is amended to read as follows:

(a) The Employees Retirement System of Texas shall submit a report not later than the 25th day of the month following the end of each fiscal year to the

governor, the lieutenant governor, the speaker of the house of representatives, the executive director of the State Pension Review Board, the appropriate oversight committees of the house and senate, and the Legislative Budget Board. The report shall include the following:

(1) the current end-of-fiscal-year market value of the trust fund;

(2) [~~the current book value of the trust fund;~~

[~~(3)~~] the asset allocations of the trust fund expressed in percentages of stocks, fixed income, cash, or other financial investments; and

(3) [~~(4)~~] the investment performance of the trust fund utilizing accepted industry measurement standards.

SECTION 23. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.512 to read as follows:

Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY. The executive director may cause a suit concerning a claim to be filed on behalf of the retirement system in a district court in Travis County to protect the system from double or multiple liability, if the executive director determines that a claim may expose the retirement system to such liability.

SECTION 24. (a) Annuities that are described by Section 814.107, 814.207, 814.305, or 814.601(a), Government Code, and are based on service retirements, disability retirements, or deaths that occurred or occur after August 31, 1996, but before September 1, 1997, are increased by 12.5 percent.

(b) The increase in annuities under Subsection (a) of this section is payable beginning with the first monthly payments of the annuities that become due after the effective date of this Act.

(c) Except as provided by Subsection (d) of this section, the board of trustees of the retirement system shall pay the increased annuities provided by this section from the retirement annuity reserve account of the retirement system and may transfer to that account from the state accumulation account of the retirement system any portion of the amount that exceeds the amount in the retirement annuity reserve account available to finance the increases in benefits, and that is actuarially determined to be necessary to finance the increases, for the duration of the annuities to which the increases apply.

(d) The increase in benefits payable to a law enforcement or custodial officer who retired before the age of 50 or for service established under Section 813.509, Government Code, is payable from the law enforcement and custodial officer supplemental retirement fund.

(e) The increase provided by Subsection (a) of this section shall be computed on the service percentage value described by Section 814.105(a), Government Code.

SECTION 25. The board of trustees of the Employees Retirement System of Texas shall authorize a supplemental payment under Section 814.603(d), Government Code, to be made in the fiscal year beginning September 1, 1997, if the conditions required by that subsection are met.

SECTION 26. Section 833.103(d), Government Code, is amended to read as follows:

(d) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 48 months of service credit in the retirement system for military service.

SECTION 27. Section 833.105, Government Code, is amended to read as follows:

Sec. 833.105. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) Except as provided by Subsection (c), payments [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d) Payments~~] may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 833.101.

(c) Under a rule adopted under this section, the designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment or reestablishment of the service would result in the payment of a death benefit annuity.

(d) The payment for the establishment or reestablishment of service under Subsection (c) must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(c) The retirement system may adopt rules to administer this section.~~]

SECTION 28. Subchapter A, Chapter 834, Government Code, is amended by adding Section 834.005 to read as follows:

Sec. 834.005. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 29. Section 834.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system[~~, the most recently performed of which was for a continuous period of at least one year~~];

(2) is at least 65 years old and has at least 12 years of service[~~, continuous or otherwise,~~] credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, [~~the most recently performed of which was for a continuous period of at least 10 years,~~] regardless of whether the member currently holds a judicial office.

SECTION 30. Section 834.302, Government Code, is amended to read as follows:

Sec. 834.302. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. (a) If a member eligible to select a death benefit plan under Section 834.301(a) dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary [~~surviving spouse~~] may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary [~~surviving spouse~~], the personal representative of the decedent's estate may make the selection.

(b) If a person dies who meets the description in Section 814.302(b), the person's designated beneficiary [~~surviving spouse~~] or the guardian of surviving minor children may select a death benefit plan under that subsection.

SECTION 31. Section 838.103(d), Government Code, is amended to read as follows:

(d) A member may [~~not~~] establish one month of service credit for each month or fraction of a month of duty, but not more than 48 months of service credit in the retirement system for military service.

SECTION 32. Section 838.105, Government Code, is amended to read as follows:

Sec. 838.105. ALTERNATIVE PAYMENTS TO ESTABLISH OR REESTABLISH SERVICE CREDIT. (a) The board of trustees may adopt rules to provide procedures for making installment payments to establish or reestablish credit in the retirement system as alternatives to lump-sum payments otherwise authorized or required by this subtitle. The methods may include payment by payroll deduction. [~~A member who is otherwise eligible may establish or reestablish service creditable in the retirement system by making payments as provided by this section in lieu of lump-sum payments otherwise authorized or required by this subtitle.~~]

(b) Except as provided by Subsection (c), payments [~~A payment authorized by this section consists of the contribution required to establish or reestablish at least one year of service credit, including any required interest and membership fees, except that a person's last in a series of payments under this section may be for a period of remaining service that is less than one year.~~

[~~(c) The retirement system shall grant the applicable amount of service credit after each payment is made under this section.~~

[~~(d) Payments~~] may not be made under a rule adopted under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 838.101.

(c) Under a rule adopted under this section, the designated beneficiary of a deceased member or, if none exists, the personal representative of the decedent's estate may establish or reestablish service for which the member was eligible at the time of death if the establishment or reestablishment of the service would result in the payment of a death benefit annuity.

(d) The payment for the establishment or reestablishment of service under Subsection (c) must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

[~~(e) The retirement system may adopt rules to administer this section.~~]

SECTION 33. Subchapter A, Chapter 839, Government Code, is amended by adding Section 839.004 to read as follows:

Sec. 839.004. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 34. Section 839.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system[~~; the most recently performed of which was for a continuous period of at least one year~~];

(2) is at least 65 years old and has at least 12 years of service[~~; continuous or otherwise;~~] credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, [~~the most recently performed of which was for a continuous period of at least 10 years;~~] regardless of whether the member currently holds a judicial office.

SECTION 35. Section 839.302, Government Code, is amended to read as follows:

Sec. 839.302. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. If a member eligible to select a death benefit plan under Section 839.301 dies without having made a selection or if a plan selected cannot be made effective, the member's designated beneficiary [~~surviving spouse~~] may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary [~~surviving spouse~~], the personal representative of the decedent's estate may make the selection.

SECTION 36. Section 840.3012(b), Government Code, is amended to read as follows:

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government

securities in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

SECTION 37. Section 840.303, Government Code, is amended to read as follows:

Sec. 840.303. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code. [~~In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.~~]

SECTION 38. Section 609.009, Government Code, is amended to read as follows:

Sec. 609.009. TRUST FOR [~~OWNERSHIP UNDER~~] 457 PLAN. An employee's deferred amounts and investment income under a 457 plan and the qualified investment products in which the amounts are invested are held in trust for the exclusive benefit of participants and their beneficiaries in accordance with Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457). For purposes of this section, custodial accounts and contracts described by Section 457 are treated as trusts. A trust does not have to be established before January 1, 1999, for a 457 plan in existence on August 20, 1996 [~~the property of the employing political subdivision or state agency, as appropriate, until the deferred amounts and investment income are distributed to the employee~~].

SECTION 39. Sections 609.502(a) and (b), Government Code, are amended to read as follows:

(a) The board of trustees of the Employees Retirement System of Texas is the trustee and the plan administrator of a 401(k) plan known as TexaSaver established under this subchapter.

(b) The board of trustees is the trustee and the plan administrator of a 457 plan established under this subchapter.

SECTION 40. Section 609.509(b), Government Code, is amended to read as follows:

(b) In a contract under Subsection (a), the board of trustees may provide for the board to audit periodically the person with whom the contract is made. The audit may cover:

(1) the proper handling and accounting of state or trust funds; and

(2) other matters related to the proper performance of the contract.

SECTION 41. Section 609.512(b), Government Code, is amended to read as follows:

(b) The deferred compensation trust fund is in the state treasury. The fund is for the benefit of the deferred compensation plan described by Section 609.502(b) [~~609.502(a)~~].

SECTION 42. Sections 3(a)(2), (8), and (9), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who has at least three years of service as an eligible employee with a department whose employees are authorized to participate in the Texas employees uniform group insurance benefits program and who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code;

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit, whose last state employment prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program;

(C) the optional retirement program established by Chapter 830, Government Code, and either receives an annuity or is eligible to receive an annuity under that program, if the [~~person's last state employment before retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program and if the~~] person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled as determined by the Employees Retirement System of Texas; or

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit.

(8) "Dependent" shall mean the spouse of an employee or retired employee and:

(A) an unmarried child under 25 years of age, including[~~: (A)~~] an adopted child and [~~(B)~~] a stepchild, foster child, or other child who is in a regular parent-child relationship;

(B) [~~and (C)~~] any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine; and

(C) any such child who is unmarried, regardless of age, for purposes of health benefits coverage under this Act, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

(9) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the Texas Department [~~State Board~~] of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of $1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the Texas Department [~~State Board~~] of Insurance;

(B) any corporation operating under Chapter 20 or 20A of the Insurance Code which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the Texas Department [~~State Board~~] of Insurance; or

(C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

SECTION 43. (a) Section 4B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) The trustee may delegate [~~the duties of the executive director under this section to another employee of the Employees Retirement System of Texas and may delegate~~] its duties to hear appeals to the executive director.

(b) Section 4B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by Chapter 391, Acts of the 72nd Legislature, Regular Session, 1991, is redesignated as Section 4B(f) to read as follows:

(f) [~~(c)~~] The executive director may delegate the duties of the executive director under this section to another person who is employed by the Employees Retirement System of Texas.

SECTION 44. Section 4C(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may develop a system for an employee[~~, school district employee,~~] or annuitant to electronically authorize:

(1) enrollment in a coverage or benefit program;

(2) contributions to a coverage or benefit program; and

(3) deductions or reductions to the compensation or annuity of the employee[~~, school district employee,~~] or annuitant for participation in a coverage or benefit program.

SECTION 45. Sections 5(b), (h), (i), and (j), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) In the event the trustee shall select a [~~as the~~] carrier [~~one~~] whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the commissioner of insurance [~~State Board of Insurance~~]. Such deviating selection shall not be deemed final and binding unless and until the commissioner of insurance [~~a majority of the State Board of Insurance~~] has certified [~~its~~] approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the commissioner [~~State Board of Insurance~~] such deviating selection shall be deemed approved.

(h) In the event the trustee determines that benefits shall be provided from the Employees Life, Accident, and Health Insurance and Benefits Fund, the trustee may contract with one or more [~~a~~] qualified and experienced administering firms [~~firm~~] on a competitive bid basis to administer the plans of coverage [~~claims arising from the coverages~~] provided in Section 5 of the Act.

(i) The trustee shall select one or more [~~the desired~~] administering firms [~~firm~~] to provide services which shall be in the best interests of the employees covered by the Act. The trustee is not required to select the lowest bid but shall take into consideration such other factors as ability to service large group programs, past experience, and other relevant criteria. Should the trustee select a firm whose bid was not the lowest or one whose bid differs from that specified, the reasons for such action shall be fully justified and explained in the minutes of the next meeting of the trustee.

(j) The trustee may not contract for or provide a plan of [~~group~~] coverage [~~or with a health maintenance organization or provide coverage directly from the fund~~] that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any [~~other~~] physical illness.

SECTION 46. Section 5A(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee may define the basic coverage in which every full-time employee and every annuitant participates unless participation is specifically waived. The trustee may define different basic coverage plans for active full-time employees and for annuitants. Basic coverage must include basic health coverage. Basic health coverage may be offered through any health benefits plan. [~~Basic coverage shall include, but not be limited to, benefits and health care service required by state and federal law.~~]

SECTION 47. Section 9, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 9. ANNUAL ACCOUNTING; SPECIAL CONTINGENCY RESERVE. (a) A carrier [~~Carriers~~] providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the carrier's [~~insurers'~~] allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing a participating [~~the~~] policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

SECTION 48. Section 10(b), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(b) Policies [~~Exemption from Taxes on Premiums. Premiums or contributions on policies~~], insurance contracts, certificates of coverage, evidence of coverage, and agreements with health maintenance organizations and plan administrators, or any other coverages established under this Act, [~~or other coverages~~] shall not be subject to any state tax, regulatory fee, or surcharge, including premium or maintenance taxes or fees.

SECTION 49. Section 11, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsections (d) and (e) to read as follows:

(d) In addition to the authority granted under Article 3.50-6, Insurance Code, the trustee may adopt rules to provide for payment of accelerated life insurance benefits to a terminally ill, terminally injured, or permanently disabled participant in amounts that benefit the participants without increasing the cost of providing the benefits. The amount of any payment of an accelerated benefit under rules adopted under this subsection must be deducted from the amount that would otherwise be payable as a death benefit.

(e)(1) In addition to retiree basic term life insurance coverage, a participant in the optional group term life insurance program may maintain

optional term life insurance coverage after retirement. The trustee may adopt rules for the implementation and administration of this subsection.

(2) A participant may maintain after retirement the amount of optional term life insurance coverage on the participant's life on the date of retirement, not to exceed two times the participant's annual salary on the last September 1 before retirement and subject to benefit reduction factors based on age as determined by the trustee. The trustee shall determine the rate for retiree optional term life insurance coverage. The rate must be comparable to the rate for optional term life insurance coverage for an active employee of the same age. Alternatively, a retiree may choose another minimum optional term life insurance coverage amount not subject to benefit reduction factors based on age, with a coverage amount and premium rate determined by the trustee.

(3) A retiree participating in optional term life insurance coverage is not eligible for premium-waived extended insurance benefits or accelerated life insurance benefits if the total disability or terminal condition, respectively, begins after the date of retirement. Accidental death and dismemberment insurance coverage ceases on the date of retirement, regardless of age.

(4) A participant who retired on or after December 31, 1995, but before September 1, 1997, and who elected at the time of retirement to continue the maximum optional term life insurance amount available to a retiree at the time, may reinstate, prospectively, the level of optional group term life insurance in force on the participant's life immediately before the participant's retirement, not to exceed the maximum coverage set for retirees in Subdivision (2) of this subsection. This subdivision expires December 31, 1997.

SECTION 50. Section 12, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) The trustee shall give effect to a full or partial disclaimer of benefits executed in accordance with Section 37A, Texas Probate Code.

SECTION 51. Sections 13(b) and (c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) Unless participation is waived specifically or unless an employee or employee-annuitant is expelled from the program under Section 13A of this Act, every full-time employee except one who is described by Section 3(a)(5)(A)(x) of this Act shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible, and each policy of insurance purchased by the trustee shall provide for such automatic coverage.

(c) Unless expelled from the program under Section 13A of this Act, each part-time employee and each employee of an institution of higher education who is described by Section 3(a)(5)(A)(x) [~~3(a)(5)(A)(viii)~~] of this Act is eligible for participation in the group programs provided under this Act upon execution of appropriate application for coverage [~~payroll deduction~~

~~authorization for the required payment of premiums~~]. An institution of higher education shall, at the time of employment, notify each employee of the institution who is described by Section 3(a)(5)(A)(x) [~~3(a)(5)(A)(viii)~~] of this Act of the employee's eligibility to participate in the group programs provided under this Act.

SECTION 52. Section 13A(f), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(f) An employee, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not participate in any [~~a health maintenance organization or be insured under any insurance or benefits~~] plan of coverage offered by the program for a period determined by the trustee of not more than five years from the date the expulsion from the program takes effect.

SECTION 53. Sections 15(b), (c), and (d), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(b) The state shall contribute to the cost of each employee's individual and dependent group coverages the amounts appropriated for the coverages in the General Appropriations Act. The governing board of each state department and institution of higher education participating in the program established under this Act shall pay the trustee a like amount for each employee's individual or dependent group coverages for their employees who are, and retirees who were, compensated from funds not appropriated in the General Appropriations Act. The departments and institutions shall include the required contributions from funds not appropriated in the General Appropriations Act in their annual operating budgets. Each state department and institution of higher education participating in the program shall assure current participant coverages based on the records of the trustee, make timely payments of amounts due the trustee from all fund sources under the control of the department or institution, and reconcile trustee and agency records of coverages and payments monthly. There [~~From and after the effective date of this Act, there~~] is hereby allocated [~~and appropriated~~] to the trustee, in accordance with the provisions of this Act, from the several funds from which [~~state~~] employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated [~~and appropriated~~] by the state, including institutions of higher education, to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all [~~state~~] employees during said year; provided, however, that in the event said estimate of the contributions of the [~~state~~] employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments and institutions of higher education participating in the program established under this Act who provide contributions for their employees' individual and dependent coverages [~~employees~~] from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts required [~~needed~~] to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

SECTION 54. Sections 18(a) and (b), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(a) The group benefits advisory committee is composed of 26 [~~27~~] voting members as provided by this section. The office of the attorney general, [~~the office of the state treasurer,~~] the office of the comptroller, the Railroad Commission of Texas, the General Land Office, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the state agency or elected by and from the employees of the agency, as determined by rule by the governing body of the agency. One employee shall be elected from each of the remaining eight largest state agencies that are governed by appointed officers by and from the employees of those agencies. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be an expert in employee benefit issues from the private sector, appointed by the governor. One member shall be an expert in employee benefits issues from the private sector, appointed by the lieutenant governor. One member shall be a retired state employee appointed by the trustee. One member shall be a state employee of a state agency other than one of the eight largest state agencies, appointed by the trustee. Not more than one employee from a particular state agency may serve on the committee. Each of the seven largest institutions of higher education, as determined by the number of employees on the payroll of an institution, shall elect one member of the committee from among persons who have each been nominated by a petition signed by at least 300 employees. Two members shall be employees of institutions of higher education, other than the seven largest institutions of higher education, who are appointed by the Texas Higher Education Coordinating Board, but not more than one employee shall be from any one institution. The members shall elect a presiding officer from their membership to serve a one-year term.

(b) All members of the committee shall be appointed or elected for three-year terms. During a term of appointment or election, state employee vacancies shall be filled by an employee of the same agency from which the vacancy occurred[~~, being~~] appointed by the governing body of the agency or institution [~~trustees~~] for the balance of the vacated term. A vacancy in a position held by a member of the private sector shall be filled by the officer who originally made the appointment to that position.

SECTION 55. Section 19, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Any employee or annuitant shall be entitled to secure for his dependents any uniform group coverages provided for employees under this Act, as shall be determined by the trustee, except that a foster child is eligible for health insurance coverage only if the child is not covered by another governmental health program. If an employee or annuitant resides outside of a health maintenance organization service area, the uniform group coverages must be made available to a dependent without evidence of insurability if the employee or annuitant applies for the coverage for the dependent during the annual enrollment period. Payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits, or the employee's salary shall be reduced in the appropriate amount, in such manner and form as the trustee shall determine.

(d) A dependent child who is unmarried and whose coverage under this Act ceases when the child reaches the age of 25 may, on expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, reinstate health benefits coverage under this Act, if the child, or the child's participating parent, pays the full cost of the health benefits coverage. A state contribution is not payable for coverage described by this subsection. Coverage under this subsection ceases at the end of the month in which the child marries.

SECTION 56. Section 659.102, Government Code, is amended to read as follows:

Sec. 659.102. DEDUCTION FOR SUPPLEMENTAL OPTIONAL BENEFITS PROGRAM. (a) An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program.

(b) The Employees Retirement System of Texas shall designate supplemental optional benefits programs that are eligible under this section and that promote the interests of the state and state agency employees. In addition, institutions of higher education as defined by Section 61.003, Education Code, or institutions as defined by Section 3(a)(7), Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), may approve employee-funded dental plans as an optional benefits program for their employees under this section.

(c) The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, or prepaid legal services.

SECTION 57. (a) Sections 803.403, 813.105, 833.106, 838.103(i), and 838.106, Government Code, are repealed.

(b) Section 5(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is repealed.

SECTION 58. (a) The change in law made by this Act in Sections 811.001(9) and 814.104(b), Government Code, is intended to reflect the current law providing for the commissioning and administration of the Capitol area security force by the Department of Public Safety. Service credit

previously accrued by a member of the Capitol area security force as a commissioned law enforcement officer of the General Services Commission, or a predecessor agency, remains credited as service by a law enforcement officer unless canceled as otherwise provided by Subtitle B, Title 8, Government Code.

(b) An employee of the Texas Education Agency whose membership was transferred from the Teacher Retirement System of Texas to the Employees Retirement System of Texas under Section 43, Chapter 812, Acts of the 73rd Legislature, Regular Session, 1993, who was a retiree of the Employees Retirement System of Texas at the time of the transfer, and who continued to make contributions to the Teacher Retirement System of Texas after the transfer may remain as a member of the Teacher Retirement System of Texas exempt from the transfer that occurred in 1993.

SECTION 59. This Act takes effect September 1, 1997.

SECTION 60. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 1102** as follows:

Delete SECTION 56 and renumber the remaining sections accordingly.

The amendments were again read.

On motion of Senator Armbrister, the Senate concurred in the House amendments to **SB 1102** by a viva voce vote.

SENATE BILL 1752 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1752** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 1752** as follows:

(1) On page 4, line 12, between "agency" and ",", insert "subject to this chapter".

(2) On page 21, line 3, between "experience" and ";", insert "or demonstrated capability".

(3) On page 26, line 10, between "experience" and ",", insert "or demonstrated capability".

(4) On page 27, line 23, strike "Section 2155.074(b)" and substitute "Sections 2155.074 and 2155.075".

(5) On page 30, line 8, between "experience" and ",", insert "or demonstrated capability".

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 1752** as follows:

On page 35, strike lines 3-4 (house committee report printing) and substitute the following:

(1) On page 4, line 12, between "(a)" and "Each", insert "For a purchase of goods and services under this chapter,".

Floor Amendment No. 3

Amend **SB 1752** by adding the appropriately numbered section to the bill and renumbering existing sections of the bill accordingly:

SECTION __. Section 1.034, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All orders of the commission shall be in writing and shall contain detailed findings of facts upon which they are passed.

(b) The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Subtitle E of this title, Title II of this Act, and Title III of this Act shall be public records, subject to the terms of Chapter 552, Government Code.

(c) The fees charged by the commission for electronic access to information that is stored in the system established by the commission using funds from the Texas Public Finance Authority and approved by the Department of Information Resources shall be established by the commission in consultation with the General Services Commission, and shall be in an amount reasonable and necessary to retire the debt to the Texas Public Finance Authority associated with establishing the electronic access system.

Floor Amendment No. 4

Amend **SB 1752** by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION __. Section 447.008, Government Code, is amended by amending Subsections (b) and (d) and adding Subsections (f), (g), and (h) to read as follows:

(b) Using available state, federal, or oil overcharge funds, the energy management center may assist state agencies and institutions of higher education in analyzing and negotiating rates for electricity and natural gas supplies from locally certificated electric suppliers, natural gas suppliers, or state-owned energy resources, including transportation charges for natural gas. The provisions of this section shall not be construed to empower the energy management center to negotiate rates for natural gas supplies on behalf of state agencies or institutions but rather to provide technical assistance as needed.

(d) Any state agency or institution of higher education with expertise in rate analysis, negotiation, or any other matter related to the procurement of

electricity and natural gas supplies from locally certificated electric suppliers, natural gas suppliers, or state-owned energy resources may assist the energy management center whenever practicable. The attorney general on request shall assist the energy management center and other state agencies and institutions of higher education to negotiate rates for electricity and other terms of electric utility service.

(f) The energy management center on request may negotiate rates for electricity and other terms of electric utility service for a state agency or institution of higher education. The energy management center may also negotiate the rates and the other terms of service for a group of agencies and institutions together in a single contract.

(g) The energy management center shall analyze the rates for electricity charged to and the amount of electricity used by state agencies and institutions of higher education to determine ways the state could obtain lower rates and use less electricity. State agencies, including the Public Utility Commission of Texas, and institutions of higher education shall assist the energy management center to obtain the information the center requires to perform its analysis.

(h) The energy management center and the attorney general shall cooperate in monitoring efforts to deregulate the electric utility industry and in reporting on the ways in which deregulation would affect state government as a purchaser of electricity. The energy management center, represented by the attorney general, may intervene in proceedings before the Public Utility Commission of Texas that are related to deregulating all or part of the electric utility industry to represent the interests of state government as a purchaser of electricity in those proceedings.

Floor Amendment No. 5

Amend **SB 1752** by adding a new Section, appropriately numbered, to read as follows and by renumbering subsequent Sections accordingly:

SECTION ____. Section 411.013(a), Government Code, is repealed.

Floor Amendment No. 6

Amend **SB 1752** by adding the following sections, appropriately numbered, and renumbering existing sections appropriately:

SECTION _____. Subchapter A, Chapter 2157, Government Code, is amended by adding Section 2157.005 to read as follows:

Sec. 2157.005. TECHNOLOGY ACCESS CLAUSE. (a) The commission and the Department of Information Resources, in consultation with other state agencies and after public comment, shall develop a technology access clause to be included in all contracts entered into by the state or state agencies.

(b) The clause shall clearly state, as a condition for the expenditure of state funds in the purchase of an automated information system, that the technology:

(1) will provide equivalent access for effective use by both visual and nonvisual means;

(2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and

(3) can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

(c) This section applies to all contracts made by state agencies that involve the purchase of an automated information system, without regard to:

(1) the source of funds used to make the purchase;

(2) whether the purchase is made under delegated purchasing authority; or

(3) whether the purchase is made under the authority of this subtitle or other law.

SECTION ____. The General Services Commission shall develop a technology access clause as required by Section 2157.005, Government Code, as added by this Act, not later than January 1, 1998.

Floor Amendment No. 1 on Third Reading

Amend **SB 1752** on third reading by adding SECTION 27 to the bill and renumbering subsequent SECTIONS of the bill accordingly:

"SECTION 27. Nothing in this Act shall increase or decrease the authority of the Public Utility Commission of Texas."

The amendments were read.

On motion of Senator Armbrister, the Senate concurred in the House amendments to **SB 1752** by a viva voce vote.

SENATORS ANNOUNCED ABSENT-EXCUSED

On motion of Senator Patterson, Senators Ogden and Wentworth were announced "Absent-excused" on account of important business.

GUESTS PRESENTED

Senator Brown was recognized and introduced to the Senate delegations from the cities of Athens, Denton, Eldorado, Irving, Lake Jackson, Mesquite, Pineland, San Antonio, and Wimberley, winners of the Governor's Community Achievement Award.

The Senate welcomed its guests.

(Senator Carona in Chair)

SENATE BILL 160 WITH HOUSE AMENDMENT

Senator Brown called **SB 160** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **SB 160** on third reading as follows:

(1) In the recital to SECTION 1 (house committee printing, page 1, line 4), between "by" and "adding", insert "amending Subsection (c) and by".

(2) In SECTION 1, in Section 37.09, Penal Code (house committee printing, page 1, lines 6-10), strike proposed Subsection (d) and substitute the following:

(c) An offense under Subsection (a) or Subsection (d)(1) [~~this section~~] is a felony of the third degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes human remains under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know *that a law enforcement agency* is not aware of the existence of or location of the remains, and fails to report the existence of and location of the remains to a law enforcement agency.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 160** by a viva voce vote.

PERMISSION TO MEET GRANTED

On motion of Senator Armbrister and by unanimous consent, the conference committees on **HB 4** and **HJR 4** were granted permission to meet while the Senate was in session.

SENATE RULE 11.11 SUSPENDED (Posting Rule)

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.11 was suspended in order that the conference committees on **HB 4** and **HJR 4** might meet today.

HOUSE CONCURRENT RESOLUTION 301

The Presiding Officer laid before the Senate the following resolution:

HCR 301, Instructing the enrolling clerk of the house of representatives to correct **HB 1917**.

WEST

The resolution was read.

On motion of Senator West and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

(Senator Brown in Chair)

SENATE BILL 1063 WITH HOUSE AMENDMENT

Senator Carona called **SB 1063** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1063** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of municipal courts of record in Richardson.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 30, Government Code, is amended by adding Subchapter KK to read as follows:

SUBCHAPTER KK. RICHARDSON

Sec. 30.01401. APPLICATION. This subchapter applies to the City of Richardson.

Sec. 30.01402. CREATION. (a) The governing body of the city may by ordinance create a municipal court of record if it determines that the formation of the court is necessary to provide a more efficient disposition of cases arising in the city. The governing body may by ordinance determine the number of municipal courts of record that are required to dispose of the cases and may establish as many as are needed. The ordinance establishing the courts must give each court a numerical designation, beginning with "Municipal Court No. 1."

(b) On creation of the initial municipal court of record, the governing body of the city shall adopt an ordinance that provides for the appointment of a municipal judge by the governing body of the city.

(c) A municipal court of record may not exist concurrently with municipal courts that are not courts of record in the city.

(d) A municipal court of record has no terms and may sit at any time for the transaction of business of the court.

Sec. 30.01403. JURISDICTION. (a) A municipal court of record created under this subchapter has jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city.

(b) The court has concurrent jurisdiction with a justice of the peace in any precinct in which the city is located in criminal cases within the justice court jurisdiction that:

(1) arise within the territorial limits of the city; and

(2) are punishable by fine only.

(c) The court has jurisdiction over cases arising outside the territorial limits of the city under ordinances authorized by Section 215.072, 217.042, 341.903, or 401.002, Local Government Code.

Sec. 30.01404. WRIT POWER. The judge of a municipal court of record created under this subchapter may grant writs of mandamus, injunction, attachment, and other writs necessary to the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court.

Sec. 30.01405. APPLICATION OF OTHER LAWS. The general law regarding municipal courts of record, the general law regarding justice courts on matters not covered by the law regarding municipal courts, and any charter provision or ordinance of the city relating to the municipal court apply to a municipal court of record unless the law, charter provision, or ordinance is in conflict or inconsistent with this subchapter.

Sec. 30.01406. JUDGE. (a) A municipal court of record is presided over by a municipal judge. The municipal judge must be a licensed attorney in

good standing in this state. The judge must be a citizen of the United States and a resident of this state.

(b) If more than one municipal court of record is created, judges of each municipal court of record may at any time exchange benches and sit and act for each other in any pending case, matter, or proceeding.

(c) A municipal judge is entitled to receive a salary and other benefits set by the governing body of the city. The judge's salary may not be diminished during the term of office. The salary may not be based directly or indirectly on fines, fees, or other costs that the municipal judge is required by law to collect during a term of office.

Sec. 30.01407. VACANCIES; TEMPORARY REPLACEMENT; REMOVAL. (a) If a vacancy occurs in the office of municipal judge, the governing body of the city shall appoint a qualified person to fill the office for the remainder of the unexpired term.

(b) The governing body of the city may appoint persons as relief municipal judges, who shall be known as assistant municipal judges. An assistant judge must meet the qualifications prescribed for the municipal judge. The governing body shall set the compensation of the assistant judges. The municipal judge may assign an assistant judge to act for a municipal judge who is temporarily unable to act for any reason. An assistant judge has all the powers and duties of the office while acting for the municipal judge.

(c) A municipal judge or assistant municipal judge may be removed from office in the manner prescribed for removal of a county court at law judge.

Sec. 30.01408. CLERK; OTHER PERSONNEL. (a) The city manager shall appoint a clerk of the municipal court of record who shall be known as the municipal court clerk.

(b) The clerk or the clerk's deputies shall keep the records of the municipal courts of record, issue process, and generally perform the duties for the court that a clerk of the county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall perform the duties in accordance with statutes, the city charter, and city ordinances.

(c) The clerk, the city manager, or the person designated as court administrator by the city manager may hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office.

Sec. 30.01409. COURT REPORTER. (a) The city shall provide a court reporter for the purpose of preserving a record in cases tried before the municipal court of record. The clerk of the court shall appoint the court reporter, who must meet the qualifications provided by law for official court reporters.

(b) The clerk may provide that, instead of providing a court reporter at trial, proceedings in a municipal court of record may be recorded by a good quality electronic recording device. If the recording device is used, the court reporter need not be present at trial to record the proceedings. The proceedings that are appealed shall be transcribed from the recording by an official court reporter.

(c) The clerk may provide for the use of written notes, transcribing equipment, or a combination of those methods to record the proceedings of the court. The court reporter shall keep the record for a 20-day period

beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last.

(d) No one is required to record testimony in a case unless the judge or one of the parties requests a record. A party's request for a record must be in writing and must be filed with the court before trial.

(e) The court reporter shall certify the official record.

Sec. 30.01410. PROSECUTION BY CITY ATTORNEY. All prosecutions in the municipal court of record must be conducted by the city attorney or an assistant or deputy city attorney.

Sec. 30.01411. COMPLAINT; PLEADING. (a) A proceeding in a municipal court of record commences with the filing of a complaint. A complaint must begin "In the name and by authority of the State of Texas" and must conclude "Against the peace and dignity of the State."

(b) Complaints must comply with Article 45.17, Code of Criminal Procedure.

(c) Pleadings must be in writing and must be filed with the municipal court clerk.

Sec. 30.01412. JURY. (a) A person brought before the municipal court and charged with an offense is entitled to be tried by a jury of six persons, unless that right is waived according to law.

(b) A juror for the municipal court must have the qualifications required of jurors by law and must be a resident of the city.

(c) A juror is entitled to receive the compensation for each day and each fraction of a day in attendance on a municipal court of record jury as provided by Chapter 61.

(d) The municipal court clerk shall establish a fair, impartial, and objective juror selection process.

Sec. 30.01413. COURT RULES. (a) Except as modified by this subchapter, the Code of Criminal Procedure as applied to county courts at law governs the trial of cases before municipal courts of record.

(b) Bonds must be payable to the state for the use and benefit of the city. The court may not assess court costs other than warrant fees, capias fees, and other fees authorized for municipal courts.

(c) A peace officer may serve a process issued by a municipal court of record.

(d) On conviction, judgment and sentence are in the name of the state, and the state recovers from the defendant the fine and fees for the use and benefit of the city. The court may require that the defendant remain in the custody of the chief of police until the fines and costs are paid and shall order that execution issue to collect the fines and penalties.

(e) Fines, fees, costs, and bonds shall be paid to the municipal court clerk, who shall deposit them in the city general fund.

Sec. 30.01414. APPEAL. (a) A defendant has the right of appeal from a judgment of conviction in a municipal court of record as provided by this subchapter. The state has the right to an appeal as provided by Article 44.01, Code of Criminal Procedure. The county criminal courts of appeal of Dallas County have jurisdiction of appeals from the municipal courts of record.

(b) The appellate court shall determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the appellant's motion and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. An appeal from the municipal court of record may not be by trial de novo.

(c) To perfect an appeal, the defendant must file a motion for new trial not later than the 10th day after the date on which the judgment and sentence are rendered. The motion must be in writing and must be filed with the clerk of the municipal court of record. The motion constitutes the assignment of error on appeal. A ground or an error not set forth in the motion is waived. If the court does not act on the motion before the expiration of 30 days after it is filed with the clerk, the motion is overruled by operation of law.

(d) After an order overruling a motion for new trial, the defendant shall give written notice of appeal and pay the transcript preparation fee not later than the 10th day after the date on which the motion is overruled. The governing body shall set a reasonable transcript preparation fee not to exceed $25. The clerk shall note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee shall be refunded to the defendant.

(e) The city attorney or the assistant or deputy city attorney shall prosecute all appeals from the municipal courts of record.

Sec. 30.01415. APPEAL BOND; RECORD ON APPEAL. (a) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.

(b) The appeal bond must be in the amount of $50 or double the amount of fines and costs adjudged against the defendant, whichever is greater. The bond must be payable to the state for the use and benefit of the city and must be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

(c) The record on appeal consists of a transcript and, if necessary to appeal, a statement of facts. The court reporter shall prepare the record from the reporter's record or mechanical recordings of the proceedings. The appellant shall pay for the cost of the transcription. If the appellant is the defendant and the court finds that the defendant is unable to pay or give security for the record on appeal after a hearing in response to an affidavit by the defendant, the court shall order the reporter to prepare the record without charge to the defendant. If the appellant is the defendant and the case is reversed on appeal, the court shall promptly refund the cost to the defendant.

Sec. 30.01416. TRANSCRIPT. (a) The clerk of the municipal court of record shall prepare under his hand and the seal of the court a transcript of the *proceedings in the municipal court* of record after payment of the transcript preparation fee under Section 30.01414. The clerk shall prepare the transcript under written instructions from the appellant or the appellant's attorney. Unless otherwise agreed by the parties in writing, the transcript must include a copy of:

(1) the complaint;
(2) court orders on any motions or exceptions;
(3) the judgment;
(4) the verdict of the jury;
(5) any findings of fact or conclusions of law made by the court;
(6) the motion for new trial and the order of the court on the motion;
(7) the notice of appeal;
(8) any statement of the parties regarding material to be included in the record;
(9) the appeal bond; and
(10) any signed paper designated as material by either party.

(b) The appellant or the appellant's attorney shall file a copy of the written instructions with the clerk and shall deliver a copy to the appellee.

(c) The appellee shall file a written direction to the clerk if additional portions of the trial proceedings in the transcript are to be included.

Sec. 30.01417. STATEMENT OF FACTS. (a) A statement of facts included in the record on appeal must contain:

(1) a transcription of all or any part of the municipal court of record proceedings in the case as recorded on the electronic recording device or shown by the notes of the court reporter recorded or taken before, during, or after the trial, if the transcription is requested by a party, a party's attorney, or the municipal judge;

(2) a brief statement of the facts of the case proven at the trial as agreed to by the defendant or the defendant's attorney and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case.

(b) The court reporter shall transcribe in duplicate any portion of the recorded proceedings or the notes of the court proceedings in the case at the request of either party or the municipal judge. The appellant shall pay for the transcription unless the appellant is the defendant and the court finds, after hearing in response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcription. On certification by the court that the court reporter has rendered the service without charge to the defendant, the court reporter shall be paid for the services by the city.

Sec. 30.01418. TRANSFER OF RECORD; FEE. The parties must file the transcript and the statement of facts with the clerk of the municipal court of record not later than the 60th day after the date on which the transcript preparation fee was paid. The clerk shall promptly forward them to the appellate court clerk.

Sec. 30.01419. BRIEF ON APPEAL. (a) The appellant must file a brief on appeal with the appellate court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk.

(b) The appellee must file the appellee's brief with the appellate court clerk not later than the 15th day after the date on which the appellant's brief is filed.

(c) To avoid unnecessary delay, the record and briefs on appeal shall be limited as far as possible to the questions relied on for reversal.

(d) On filing, each party shall deliver a copy of the brief to the opposing counsel.

Sec. 30.01420. PROCEDURE; DISPOSITION ON APPEAL. (a) The appellate court shall hear appeals from the municipal court of record at the earliest *possible time* with due regard to the rights of the parties and the proper administration of justice. The court may determine the rules for oral argument. The case may be submitted on the record and briefs without oral argument.

(b) According to the law and the nature of the case, the appellate court may:

(1) affirm the judgment of the municipal court of record;

(2) reverse and remand for a new trial;

(3) reverse and dismiss the case; or

(4) reform and correct the judgment.

(c) Unless the matter was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts, the appellate court shall presume that:

(1) venue was proven in the trial court;

(2) the jury, if any, was properly impaneled and sworn;

(3) the defendant was arraigned and pleaded to the complaint; and

(4) the municipal judge certified the charge and the clerk filed the charge before it was read to the jury.

(d) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The court need not give a reason for overruling an assignment of error, but it may cite the cases on which it relied. If an assignment of error is sustained, the court shall set forth the reasons for the decision. The appellate court *clerk shall mail copies* of the decision to the parties and to the municipal judge as soon as the decision is rendered.

Sec. 30.01421. CERTIFICATE OF APPELLATE PROCEEDINGS. When the judgment of the appellate court becomes final, the clerk of that court shall certify the proceedings and the judgment and shall mail the certificate to the clerk of the municipal court of record. When the clerk of the municipal court of record receives the record, the clerk shall file the record with the papers in the case and note the filing on the docket of the municipal court of record. If the municipal court of record judgment is affirmed, further action to enforce the judgment is not necessary except to:

(1) forfeit the bond of the defendant;

(2) issue a writ of capias for the defendant; or

(3) issue an execution against the defendant's property.

Sec. 30.01422. EFFECT OF ORDER OF NEW TRIAL. If the appellate court awards a new trial to the defendant, the case stands as if a new trial had been granted by the municipal court of record.

Sec. 30.01423. APPEAL TO THE COURT OF APPEALS. An appeal of the appellate court decision to the court of appeals is governed by the Code of Criminal Procedure, except that the transcript, briefs, and statement of facts filed in the appellate court constitute the transcript, briefs, and statement of facts on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1063**.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

HB 1703, HB 1751, HB 1756, HB 1780, HB 1960, HB 2078, HB 2169, HB 2202, HB 2203, HB 2213, HB 2221, HB 2222, HB 2227, HB 2257, HB 2273, HB 2309, HB 2564, HB 2622, HB 2633, HB 2634, HB 2671, HB 2731, HB 2749, HB 2779, HB 2795, HB 2868, HB 2919, HB 2982, HB 2997, HB 3027, HB 3074, HB 3076, HB 3077, HB 3078, HB 3105, HB 3106, HB 3176, HB 3330, HB 3368, HB 3436, HB 3437, HB 3557, HB 3566, HB 3569, HB 3591, HCR 2, HCR 23, HCR 149, HCR 151, HCR 156, HCR 168, HCR 209, HCR 211, HCR 212, HCR 228, HCR 232, HCR 235, HCR 236

SENATE BILL 665 WITH HOUSE AMENDMENTS

Senator Haywood called **SB 665** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 665** as follows:

(1) On page 7, between lines 9 and 10, add a new Sec. 7A to read as follows:

"Sec. 7A. ADMINISTRATIVE PENALTY. (a) The commissioner of agriculture may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed $500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or

potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An employee of the Department of Agriculture designated by the commissioner to act under this section who determines that a violation has occurred may issue to the commissioner of agriculture a report that states the facts on which the determination is based and the designated employee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the designated employee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the designated employee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the designated employee, the commissioner of agriculture by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the designated employee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of agriculture a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of agriculture by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner of agriculture's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner of agriculture's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner of agriculture's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the designated employee by certified mail.

(l) A designated employee who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersede as bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the designated employee may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner of agriculture:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code, except as provided by Subsections (s) and (t).

(s) Notwithstanding Section 2001.058, Government Code, the commissioner of agriculture may change a finding of fact or conclusion of law made by the administrative law judge if the commissioner of agriculture:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law, department rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a department policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(t) The commissioner of agriculture shall state in writing the specific reason and legal basis for a determination under Subsection (s)."

(2) Delete SECTION 13 in its entirety and renumber sections accordingly.

Floor Amendment No. 2

Amend **SB 665** by adding appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS of the bill accordingly:

SECTION ____. Section 32.45(a)(1), Penal Code, is amended to read as follows:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 153.001, Tax Code; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

SECTION ___. (a) The change in law made by Section ___ of this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

The amendments were read.

On motion of Senator Haywood, the Senate concurred in the House amendments to **SB 665** by a viva voce vote.

GUEST PRESENTED

Senator Barrientos was recognized and introduced to the Senate Austin City Council Member Eric Mitchell.

The Senate welcomed Councilman Mitchell.

SENATE BILL 436 WITH HOUSE AMENDMENT

Senator Lucio called **SB 436** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend Senate engrossed version of **SB 436** as follows:

On page 3, line 12 insert the following after "description" and before the "period": "pursuant to Section 193.009(b)(4)".

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 436** by a viva voce vote.

SENATE BILL 1276 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 1276** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1276** as follows:

(1) On page 2, line 5, insert "per trip" between "$80" and ".".

Floor Amendment No. 2

Amend **SB 1276** as follows:

(1) In SECTION 1 of the bill, in proposed Section 623.215(a), Transportation Code (House committee report, page 2, line 24), in Subdivision (5), strike "and".

(2) In SECTION 1 of the bill, in proposed Section 623.215(a), Transportation Code (House committee report, page 3, line 2), in Subdivision (6), strike the period and substitute ";".

(3) In SECTION 1 of the bill, in proposed Section 623.215(a), Transportation Code (House committee report, page 3, between lines 2 and 3), insert the following:

(7) the name of the driver of the vehicle in which the cargo is to be transported; and

(8) the location where the cargo was loaded.

The amendments were read.

On motion of Senator Lucio, the Senate concurred in the House amendments to **SB 1276** by a viva voce vote.

SENATE BILL 1937 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1937** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1937**, page 1, line 23 by inserting after the words "right-of-way;" the following: "to ensure the ability of municipalities to exercise their authority to manage the public rights-of-way,".

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 1937** by a viva voce vote.

SENATE BILL 472 WITH HOUSE AMENDMENT

Senator Cain called **SB 472** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 472** as follows:

(1) On page 2, line 12, after "securities" insert:

", or shall enter into one or more payment agreements, financial guarantees or insurance contracts with counterparties having either a corporate credit or debt rating in any form, a claims-paying ability, or a rating for financial strength of "AA" or better by Moody's Investors Service, Inc. or by Standard & Poor's Corporation, or "A (Class XII)" or better by BEST's rating system,"

(2) On page 2, line 12, after "that" insert: "by their terms,".

(3) On page 2, line 13, after the comma insert: "or payment obligations,".

The amendment was read.

Senator Cain moved to concur in the House amendment to **SB 472**.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 99 ADOPTED

Senator Patterson called from the President's table the Conference Committee Report on **SB 99**. The Conference Committee Report was read and was filed with the Senate on Monday, May 26, 1997.

On motion of Senator Patterson, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTES

Senators Moncrief, Ratliff, and Zaffirini asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

(Senator Ratliff in Chair)

SENATE RESOLUTION 906

Senator Brown offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 2542** to consider and take action on the following specific matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text incorporating new SECTIONS in the bill, appropriately numbered, amending the Parks and Wildlife Code to authorize the establishment of a crab license management program to read as follows:

SECTION ___. The heading of Chapter 78, Parks and Wildlife Code, is amended to read as follows:

CHAPTER 78. MUSSELS, [~~AND~~] CLAMS, AND CRABS

SECTION __. Sections 78.001 through 78.007, Parks and Wildlife Code, are designated as Subchapter A, Chapter 78, Parks and Wildlife Code, and a heading for Subchapter A, Chapter 78, Parks and Wildlife Code, is added to read as follows:

SUBCHAPTER A. MUSSELS AND CLAMS

SECTION __. Chapter 78, Parks and Wildlife Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. CRAB LICENSE MANAGEMENT

Sec. 78.101. CRAB LICENSE MANAGEMENT PROGRAM. To promote efficiency and economic stability in the crabbing industry and to conserve economically important crab resources, the department shall implement a crab license management program in accordance with proclamations adopted by the commission under Chapter 61 and this subchapter.

Sec. 78.102. DEFINITIONS. In this subchapter:

(1) "Crab" means all species in the families Portunidae and Xanthidae.

(2) "Commercial crab fishing" means pursuing, taking, attempting to take, or landing crabs in this state for pay or for the purpose of sale, barter, or exchange.

(3) "License" means a commercial license issued in accordance with a proclamation under this subchapter that authorizes commercial crab fishing or the operation of a commercial crab boat.

Sec. 78.103. CRAB LICENSE MANAGEMENT REVIEW BOARD. (a) The license holders under this chapter shall elect a crab license management review board with an odd number of members greater than four and fewer than 12.

(b) A member of the review board must be a license holder under this subchapter or a wholesale fish dealer as defined by Section 47.001 with knowledge of the commercial crab fishing industry.

(c) A majority of the members of the review board may not be residents of the same county.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the crab licensing program, including the definition of flagrant offenses, and hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(e) The executive director shall adopt procedures for determining the size and operations of the review board and the election and terms of board members. The executive director shall solicit and consider recommendations regarding these procedures from persons who purchased crab trap tags after September 1, 1995, and before August 31, 1996, or from holders of licenses issued under this subchapter.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

(g) A member of the review board serves without compensation or a per diem allowance.

Sec. 78.104. LICENSING. (a) If the commission adopts one or more licenses to be issued under this subchapter, a person may not engage in commercial crab fishing without a license adopted by the commission. If the commission adopts a commercial crab boat license to be issued under this subchapter, a person may not operate a boat for the purpose of commercial crab fishing without having a boat license as prescribed by the commission.

(b) A proclamation under this section requiring a license must contain findings by the commission that support the need for the proclamation. In determining the need for a license requirement, the commission shall consider:

(1) measures to prevent waste or depletion of crabs while achieving, on a continuing basis, the optimum yield for the fishery;

(2) the best scientific information available;

(3) the effect a licensing program would have on the management of crabs throughout the jurisdictional range;

(4) the need to promote, where practicable, efficiency in using crabs; and

(5) the need to enhance enforcement.

(c) A proclamation issued under this section may:

(1) establish a license that is issued to a person, to a person and limited to a vessel, or to a person according to the equipment used in commercial crab fishing, including issuing tags for crab traps placed in public waters under Section 66.018;

(2) establish eligibility requirements for a license, including the use of historical participation in the industry or participation in the industry after August 31, 1995, and before November 14, 1996;

(3) establish requirements for license transfer;

(4) prohibit license transfer during certain time periods; and

(5) establish a lottery or an auction for issuing licenses.

Sec. 78.105. LICENSE FEE. The fee for a license is $500, or an amount set by the commission, whichever amount is more. All fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

Sec. 78.106. LICENSE RENEWAL. A person seeking to renew a license established by this subchapter must have held the license during the preceding license year.

Sec. 78.107. LIMIT ON NUMBER OF LICENSES HELD. (a) A person may not hold or directly or indirectly control more than three licenses issued under this subchapter other than an equipment license.

(b) A license issued to a person other than an individual must designate an individual in whose name the license will be issued.

Sec. 78.108. EXPIRATION OF LICENSE. A license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Each period is one year beginning on September 1 or another date set by the commission.

Sec. 78.109. LICENSE TRANSFER. (a) The commission by rule may set a fee for the transfer of a license. The amount of the fee may not exceed the amount of the license fee.

(b) The commission shall send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account.

(c) The commission by proclamation shall allow a license to be transferred beginning not later than September 1, 2001. The commission shall annually review the decision regarding license transfer.

(d) Notwithstanding Subsection (c), a license may be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Sec. 78.110. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice to a license holder and the opportunity for a hearing, may suspend or revoke a license if the license holder or any other operator of a licensed vessel is shown to have been convicted of one or more flagrant offenses defined by a proclamation of the commission during a period described by the proclamation of the commission.

(b) A license suspension does not affect the license holder's eligibility to renew the license after the suspension expires.

(c) The same flagrant offense may not be counted for more than one suspension under this section.

Sec. 78.111. LICENSE BUYBACK. (a) The department may implement a license buyback program as part of the crab license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director must consult with the crab license management review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the crab fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside at least 20 percent of the fee from commercial crab licenses and transfer fees to be used only for the purpose of buying back commercial crab licenses from a willing license holder. That money shall be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

(e) The department may accept grants and donations of money or materials from private or public sources for the purpose of buying back commercial crab licenses from a willing license holder and shall send the accepted money or material to the comptroller for deposit to the credit of the game, fish, and water safety account to be used only for the purpose of buying back commercial crab licenses from a willing license holder.

(f) Money to be used for the purpose of buying back commercial crab licenses is not subject to Section 403.095, Government Code.

Sec. 78.112. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Sec. 78.113. DISPOSITION OF FUNDS. Money received for a license issued under this subchapter or fines for violations of this subchapter shall be remitted to the department by the 10th day of the month following the date of collection.

Sec. 78.114. PROCLAMATION; PROCEDURES. Subchapter D, Chapter 61, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

SECTION ___. Section 47.002, Parks and Wildlife Code, is amended by adding Subsection (h) to read as follows:

(h) A person who engages in or assists in commercial crab fishing under Subchapter B, Chapter 78, and who holds a license for that activity is not required to obtain or possess a general commercial fisherman's license or a commercial fishing boat license.

SECTION ___. Section 66.018, Parks and Wildlife Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f) to read as follows:

(a) The department may [~~shall~~] issue [~~numbered~~] tags for crab traps placed in public water.

(c) A crab trap tag issued under this section shall be attached to each crab trap placed in public water. The department may [~~shall~~] collect a maximum fee of $1.50 for each tag issued under this section; provided, however, that upon adoption of a crab management plan and the establishment of a crab advisory committee, the commission may determine the amount of the fee.

(d) No person may place a crab trap in public water unless a crab trap tag is attached to the trap unless a proclamation under Subchapter B, Chapter 78, requires a license that does not require the use of crab trap tags.

(f) If the commission adopts a license under Subchapter B, Chapter 78, the department may not collect a fee for any crab trap tag.

Explanation: This change is necessary to authorize the Texas Parks and Wildlife Commission to establish a crab license management program.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text incorporating new SECTIONS of the bill, appropriately numbered, adding transitional material to the bill relating to the amendments to the Parks and Wildlife Code establishing a crab license management program to read as follows:

SECTION ___. Notwithstanding Section 78.103, Parks and Wildlife Code, as added by this Act, a person is eligible to vote in the election of or serve on the initial crab license management review board only if the person purchased crab trap tags after September 1, 1995, and before August 31, 1996, except that wholesale fish dealers with knowledge of the commercial crab fishing industry may also serve on the board. The initial board shall consist of an odd number of members greater than four and fewer than 12. The election of the initial board shall be held before November 1, 1997, or as soon as practicable after that date.

SECTION ___. The Parks and Wildlife Department shall issue a written report to the governor and the legislature not later than January 1, 2001, that includes an overview of the administration and status of the crab license management program, including the biological, social, and economic effects of the program.

Explanation: This change is necessary to establish eligibility criteria and election procedures for the initial crab license management review board and to require the Parks and Wildlife Department to report on the status of the crab license management program.

(3) Subdivision (4), Senate Rule 12.03, is suspended to permit the committee to add an appropriately numbered SECTION to the bill requiring the Parks and Wildlife Department to respond to certain reports and to read as follows:

SECTION ___. (a) Not later than October 1, 1997, the Parks and Wildlife Department shall submit to the legislature a report describing the actions the department has taken, and the actions the department plans to take during the 1998-1999 biennium, to address deficiencies in maintenance, operational support, and promotion of historic structures, sites, and parks under the department's jurisdiction. The report shall respond in detail to the findings and recommendations included in the study of state historic sites conducted for the department and the Texas Historical Commission by KPMG Peat Marwick, L.L.P., and submitted to those agencies in January 1997.

(b) Copies of the department's report shall be delivered to the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the senate and house standing committees having jurisdiction over matters relating to preservation of state historic structures, sites, and parks.

Explanation: This change is necessary to require the Parks and Wildlife Department to respond to a report regarding the administration of historic sites.

The resolution was read and was adopted by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

SENATE RESOLUTION 908

Senator Madla offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2846** to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section in the bill, appropriately numbered, to amend Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to read as follows:

SECTION ____. Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by Chapters 214 and 862, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 3.10. FEES. (a) All annual registration fees collected by the board shall be placed in the State Treasury to the credit of the medical registration fund. The fees deposited to this special fund shall be credited to the appropriations of the board and may be spent only as provided by the General Appropriations Act, this Act, or other applicable statutes. Money in that fund may be used by the board and under its direction in the enforcement of this Act, the prohibition of the unlawful practice of medicine, the dissemination of information to prevent the violation of the laws, and the prosecution of those who violate the laws. All distributions from the fund may be made only upon written approval of the secretary-treasurer of the board or his designated representative, and the comptroller shall upon requisition of the board from time to time draw warrants upon the State Treasurer for the amounts specified in the requisition.

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

(1) for processing and granting a license by reciprocity to a licensee of another state ..... $1,000 [~~$700~~]

(2) for processing an application and administration of a partial examination for licensure ..... $1,000 [~~$700~~]

(3) for processing an application and administration of a complete examination for licensure..... $1,000 [~~$700~~]

(4) for processing an application and issuance of a temporary license $200

(5) for processing an application and issuance of a duplicate license $200

(6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license ..... $1,000 [~~$700~~]

(7) for processing an application and issuance of an annual registration of a licensee $200

(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs $200

(9) for processing an application and issuance of an endorsement to other state medical boards $200

(10) for processing and issuance of a license or temporary license to a physician assistant $200

(11) for processing and issuance of a permit to a physician who supervises an acupuncturist.....$200.

(c) [~~(b)~~] The board may set and collect a sales charge for making copies of any paper of record in the office of the board and for any printed material published by the board. The charges shall be in amounts considered sufficient to reimburse the board for the actual expense.

(d) [~~(c)~~] The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(e) [~~(d)~~] The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Explanation: This change is necessary to increase certain fees assessed by the Texas State Board of Medical Examiners to levels that cover the administrative costs of that agency in providing the affected services.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section in the bill, appropriately numbered, to amend the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) to add a new Section 5.11 to read as follows:

SECTION ____. Subchapter E, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 5.11 to read as follows:

Sec. 5.11. PHYSICIAN PROFILES. (a) The board shall create a profile of each physician licensed under this Act. The profile must:

(1) include the information required by Subsection (b) of this section; and

(2) be compiled in a format that permits the board to make the information contained in the profile available to the public.

(b) A profile must contain the following information on each physician:

(1) the name of each medical school attended and the dates of graduation;

(2) a description of any graduate medical education;

(3) any specialty certification recognized by the board and held by the physician;

(4) the number of years the physician has practiced medicine;

(5) the name of each hospital in which the physician has privileges;

(6) the physician's primary practice location;

(7) whether the physician provides any language translating services, including translating services for a person with impairment of hearing, at the physician's primary practice location;

(8) whether the physician participates in the Medicaid program;

(9) a description of any conviction for an offense constituting a felony or a serious misdemeanor that reflects adversely on the physician's clinical competence to practice medicine in an acceptable manner consistent with the public health and welfare or affects adversely:

(A) the physician's ability to practice medicine in an acceptable manner consistent with the public health and welfare, as determined by board rule, during the 10-year period preceding the date of the profile; or

(B) the safety of the physician's patients;

(10) a description of any charges reported to the board under Section 5.07(a) of this Act during the 10-year period preceding the date of the profile to which the physician has pleaded no contest or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;

(11) a description of any final disciplinary action against the physician by the board during the 10-year period preceding the date of the profile;

(12) a description of any final disciplinary action against the physician by a medical licensing board of another state during the 10-year period preceding the date of the profile;

(13) a description of any revocation of or involuntary restriction of longer than 30 days on the physician's hospital privileges, after notice and hearing, imposed by the hospital's governing body or other hospital official that was based on clinical quality of patient care during the 10-year period preceding the date of the profile;

(14) a description of any resignation from or nonrenewal of medical staff membership or restriction on hospital privileges of longer than 30 days that was based on clinical quality of patient care imposed as a settlement of a pending disciplinary proceeding during the 10-year period preceding the date of the profile;

(15) a description of the type of allegation and of each review action taken by the board as the result of opening a complaint regarding a physician against whom three or more malpractice claims were reported under Section 5.05 of this Act in a five-year period; and

(16) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law.

(c) Information required to be included under Subsection (b) of this section that is not maintained by the board in the ordinary course of the board's duties shall be obtained from a physician at the time the physician renews the physician's license. In requesting information from the physician, the board shall inform the physician that compliance with the request for information is mandatory, inform the physician of the date the information will be made available to the public, and instruct the physician of the requirements under Subsection (f) of this section for the physician to obtain a copy of the physician's profile to make corrections.

(d) This section does not prevent the board from providing explanatory information regarding the significance of categories in which malpractice settlements are reported.

(e) A pending malpractice claim, other than a claim disclosed under Subsection (b)(15) of this section, may not be disclosed to the public by the board. This subsection does not prevent the board from investigating and disciplining a physician on the basis of a pending medical malpractice claim.

(f) The board shall provide an individual physician with a copy of the physician's profile if the physician requests a copy at the time the physician renews the physician's license. If a copy is requested by a physician the board shall provide the physician one month from the date the copy is provided to the physician to correct factual errors in the physician's profile.

(g) The board shall update the information contained in a physician's profile annually. The board shall adopt a form that allows a physician to update information contained in a physician's profile or to provide additional information to be included in the profile. The form shall be made available electronically and on the Internet. A physician may update information in the physician's profile or provide additional information for the profile at any time. The board may assess a fee to be paid by the physician to update the physician's profile at a time other than the board's annual update and a fee to cover the costs of including additional information in the profile not required by the board. The board may adopt rules concerning the type and content of additional information that may be included in a physician's profile.

(h) The board shall adopt rules as necessary to implement this section.

Explanation: This change is necessary to authorize the Texas State Board of Medical Examiners to establish a physician profiling system to improve the efficiency of that agency in regulating the practice of medicine in this state.

(3) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating transitional material in the bill to implement the amendment to Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and the addition of Section 5.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to read as follows:

(b) Section 3.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act, applies only to a fee assessed for a license application, license issuance, or license examination occurring on or after the effective date of this Act.

(c) The Texas State Board of Medical Examiners shall adopt rules under Section 5.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, not later than January 1, 1998. The board shall make the initial physician profiles required under that section available to the public not later than June 1, 1999.

(d) The Texas State Board of Medical Examiners shall raise fees prescribed by the board in an amount not to exceed $15 for each fiscal year in the 1998-1999 biennium and not to exceed $10 for each fiscal year in the 2000-2001 biennium for each physician licensed by the board to cover the costs of administering the changes in law made by this Act. The board shall reduce any fees raised under this subsection not later than the second anniversary of the date the initial physician profiles required under Section 5.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, are made available to the public to the extent the increase in fee amounts was necessary to cover the initial costs incurred by the board in establishing a physician profile system.

Explanation: This change is necessary to clarify the implementation of the new fee increases and physician profiling system adopted under the amendments to the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

The resolution was read and was adopted by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

HOUSE CONCURRENT RESOLUTION 281

The Presiding Officer laid before the Senate the following resolution:

HCR 281, Directing the General Services Commission to request that the Texas Jewelers Association conduct a design contest.

The resolution was read.

On motion of Senator Carona and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

(Senator Carona in Chair)

HOUSE BILL 2133 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2133, Relating to the creation, powers, and duties of the State Office of Risk Management and to provisions of workers' compensation insurance coverage for state employees.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2133** as follows:

(1) In SECTION 1 of the bill, in Section 412.021(b), Labor Code, as added by the bill (page 3, lines 12-16, Senate committee report printing), strike "six members as follows:

(1) three members appointed by the lieutenant governor; and

(2) three members appointed by the speaker of the house of representatives." and substitute "six members appointed by the governor."

(2) In SECTION 1 of the bill, in Section 412.021(d), Labor Code, as added by the bill (page 3, lines 21-23, Senate committee report printing), strike "lieutenant governor and speaker of the house of representatives shall designate one member of the board as presiding officer on an alternating basis." and substitute "governor shall designate one member of the board as presiding officer."

(3) In SECTION 1 of the bill, in Section 412.024(b), Labor Code, as added by the bill (page 4, lines 15-17, Senate committee report printing), strike "notify the lieutenant governor, the speaker of the house of representatives, and the attorney general that a potential ground for removal exists." and substitute "notify the governor and the attorney general that a potential ground for removal exists."

(4) In SECTION 1 of the bill, in Section 412.024(b), Labor Code, as added by the bill (page 4, lines 19-21, Senate committee report printing),

strike "notify the lieutenant governor, the speaker of the house of representatives, and the attorney general that a potential ground for removal exists." and substitute "notify the governor and the attorney general that a potential ground for removal exists."

(5) In SECTION 10 of the bill, in Subsection (b) of that section (page 9, lines 31 and 32, Senate committee report printing), strike "the lieutenant governor and the speaker of the house of representatives shall each appoint" and substitute "the governor shall appoint".

(6) In SECTION 10 of the bill, in Subsection (c) of that section (page 9, line 37, Senate committee report printing), strike "The lieutenant governor" and substitute "The governor".

The amendment was read and was adopted by a viva voce vote.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2133** (committee printing) as follows:

1). On page 1, line 46, strike Subsection (c) and substitute the following:

"(c) The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction."

2). On page 2, line 35, following "agencies", insert "any anticipated changes in agencies' workforces".

3). On page 2, line 56, following "Appropriations Act.", insert "For the first biennium that the allocation program is in effect, an agency whose worker's compensation claim costs exceed the amount allocated shall pay the additional costs from the agency's regular appropriated funds up to an amount equal to 50 percent of the total amount allocated to the agency. After the first biennium, the [~~The~~]"

3). On page 9, line 29, add the following to the end of Subsection (a), SECTION 10:

"No indirect funding or indirect full time equivalent employees (FTEs) associated with the Division of Worker's Compensation in the Office of the Attorney General and Division of Risk Management in the Texas Worker's Compensation Commission shall be transferred to the State Office of Risk Management. All indirect funding associated with each division shall be credited to the accounts of each agency, as provided in the General Appropriations Act. All indirect full time equivalent employees (FTEs) associated with each division shall remain with each agency."

The amendment was read and was adopted by a viva voce vote.

HB 2133 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2133 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2133** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

HB 2133 was read third time and was passed by a viva voce vote.

HOUSE BILL 2948 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2948, Relating to the creation and re-creation of funds and accounts in the state treasury, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2948** by striking all below the enacting clause and substituting the following:

SECTION 1. DEFINITION. In this Act, "state agency" means an office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state, but does not include an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created in the state treasury by an Act of the 75th Legislature, Regular Session, 1997, that becomes law, and all dedications or rededications of revenue in the state treasury or otherwise collected by a state agency for a particular purpose by an Act of the 75th Legislature, Regular Session, 1997, that becomes law, are abolished on the later of August 30, 1997, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

SECTION 3. PREVIOUSLY EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Section 2 of this Act does not apply to statutory dedications, funds, and accounts that were enacted before the 75th Legislature convened to comply with requirements of state constitutional or federal law, to dedications, funds, or accounts that remained exempt from former Section 403.094(h), Government Code, at the time dedications, accounts, and funds were abolished under that provision, to increases in fees or in other revenue dedicated as described by this section, or to increases in fees or in other revenue required to be deposited in a fund or account described by this section.

SECTION 4. ACCOUNTS IN GENERAL REVENUE FUND. Effective August 30, 1997, the following accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act and Section 403.095, Government Code, and are created in the general revenue

fund, if created by an Act of the 75th Legislature, Regular Session, 1997, that becomes law:

(1) the capital access fund account created by Senate Bill No. 266;

(2) the account containing fees for maintaining a real estate license on inactive status created by House Bill No. 1346;

(3) the sexual assault prevention and crisis services fund created by House Bill No. 2561;

(4) laboratory service charges authorized by House Bill No. 2389;

(5) sale or licensing fees for the use of treatment programs authorized by House Bill No. 2082;

(6) the excess benefit arrangement accounts created by Senate Bill No. 1102 and House Bill No. 2644;

(7) fees and accounts created by House Bill No. 3231;

(8) the Texas child care fund created by Senate Bill No. 211;

(9) the emergency reserve fund created by Senate Bill No. 1156;

(10) the watermaster fund created by Senate Bill No. 1406;

(11) funds and accounts created by House Bill No. 1188;

(12) the disaster management trust fund created by House Bill No. 99;

(13) revenue collected under the authority of House Bill No. 16;

(14) revenue collected for the game, fish, and water safety account as provided by House Bill No. 966;

(15) revenue apportioned as provided by House Bill No. 2153;

(16) crab management license fees authorized by Senate Bill No. 920;

(17) proceeds to relocate the State Aircraft Pooling Board authorized by House Bill No. 3585;

(18) menhaden boat license fees authorized by House Bill No. 520; and

(19) licensing fees authorized by Senate Bill No. 771.

SECTION 5. OTHER FUNDS IN TREASURY. Effective August 30, 1997, the following funds in the state treasury and the revenue deposited to the credit of the funds are exempt from Section 2 of this Act and Section 403.095, Government Code, if created by an Act of the 75th Legislature, Regular Session, 1997, that becomes law:

(1) the groundwater district loan assistance fund created by Senate Bill No. 1;

(2) the Texas water development fund II, including all accounts in the fund, created by Senate Bill No. 1;

(3) the safe drinking water revolving fund created by Senate Bill No. 1;

(4) the basic civil legal services account of the judicial fund created by Senate Bill No. 1534;

(5) the state infrastructure bank and revenues of the turnpike division of the Texas Department of Transportation as provided by Senate Bill No. 370;

(6) the telecommunications infrastructure fund and the revenue dedicated to it as provided by Senate Bill No. 249;

(7) revenue, funds, and accounts authorized by House Bill No. 4;

(8) permit fees authorized by House Bill No. 1345;

(9) revenue, funds, and accounts authorized by Senate Bill No. 190; and

(10) revenue, funds, and accounts authorized by Senate Bill No. 932.

SECTION 6. CERTAIN FEE REVENUE. Effective August 30, 1997, revenue consisting of fees collected under Section 5(m), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is dedicated for the purposes provided by that subsection and is exempt from Section 2 of this Act and Section 403.095, Government Code.

SECTION 7. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 75th Legislature, Regular Session, 1997, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 8. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 75th Legislature, Regular Session, 1997, except that the trust funds shall be held in the state treasury, with the comptroller in trust, or outside the state treasury with the comptroller's approval.

SECTION 9. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 75th Legislature, Regular Session, 1997, except that the funds shall be held in the state treasury, with the comptroller in trust, or outside the state treasury with the comptroller's approval. Funds exempt under this section include bond and pledged funds or accounts created or affected by the following, if enacted by the 75th Legislature, Regular Session, 1997, by an Act that becomes law:

(1) revenue bond funds in Senate Bill No. 1060;

(2) revenue bonds in Senate Bill No. 370; and

(3) revenue bond accounts in House Bill No. 3189.

SECTION 10. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created in the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under constitutional amendments proposed by the 75th Legislature, Regular Session, 1997, or to dedicated revenue deposited to funds or accounts that would be so created or re-created. Funds, accounts, and revenue exempted under this section include the following:

(1) the Texas tomorrow fund in House Joint Resolution No. 8 and House Bill No. 9;

(2) the crime victims compensation fund and the crime victims auxiliary fund in Senate Joint Resolution No. 33 and House Bill No. 3062;

(3) lottery and property tax revenue in House Joint Resolution No. 4 or House Bill No. 4;

(4) the Texas growth fund II in House Bill No. 138 or similar legislation; and

(5) the Texas water development fund II in Senate Joint Resolution No. 17 or similar legislation.

SECTION 11. LICENSE PLATE FEES. Effective August 30, 1997, revenue consisting of fees collected from the sale of motor vehicle license plates that are authorized by an Act of the 75th Legislature, Regular Session, 1997, that becomes law are exempt from Section 2 of this Act and Section 403.095, Government Code.

SECTION 12. COURT COSTS. Effective August 30, 1997, revenue consisting of court costs authorized by an Act of the 75th Legislature, Regular Session, 1997, that becomes law are exempt from Section 2 of this Act and Section 403.095, Government Code.

SECTION 13. AMENDMENT. Effective September 1, 1997, Sections 403.095(b) and (c), Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 1999 [~~1997~~], exceed the amount appropriated are available for general governmental purposes. The comptroller shall develop accounting and revenue estimating procedures so that each dedicated account maintained in the general revenue fund can be separately identified as to balances of cash and other assets and the amounts of revenues and expenditures and appropriations for each fiscal year. Following certification of the General Appropriations Act and other appropriations measures, the comptroller shall reduce each dedicated account by the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary so that cash flow considerations allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required for accounts under this subsection that exceed the amount appropriated for the dedicated purposes. This subsection does not apply to revenues in:

(1) funds outside the treasury;

(2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;

(3) funds created by the constitution or a court; or

(4) funds for which separate accounting is required by federal law.

(c) The availability of revenues for general governmental purposes conferred by Subsection (b) expires on September 1, 1999 [~~1997~~].

SECTION 14. AMENDMENT. The heading to and Subsection (a) of Section 2201.003, Government Code, are amended to read as follows:

Sec. 2201.003. TRANSFERS FROM CAPITAL TRUST [~~RELATION TO GENERAL REVENUE~~] FUND. (a) Interest earned by [~~Income from~~] the fund shall be deposited to the credit of the housing trust [~~general revenue~~] fund.

SECTION 15. EFFECT OF ACT. This Act prevails over any other Act of the 75th Legislature, Regular Session, 1997, regardless of the relative dates of

enactment, that purports to create or re-create a special fund or account in the state treasury or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code. Revenues that, under the terms of another Act of the 75th Legislature, Regular Session, 1997, would be deposited to the credit of a special account or fund shall be deposited to the credit of the unobligated portion of the general revenue fund, unless the fund, account, or dedication is exempted under this Act.

SECTION 16. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

HB 2948 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2948 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2948** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

HB 2948 was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

HOUSE CONCURRENT RESOLUTION 269

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, Department of Public Safety officers faced a difficult situation recently when they responded to a hostage crisis precipitated by a group of armed separatists in Fort Davis, but through the restraint and sound judgment of the officers on the scene, a potential disaster was averted; and

WHEREAS, The crisis began on April 27, 1997, when members of the Republic of Texas separatist movement seized two hostages, wounding one of the hostages in the process; the separatists then ensconced themselves in their Fort Davis compound, and Department of Public Safety officers and Texas Rangers were called to the scene; and

WHEREAS, Texas Rangers Captain Barry Caver opened negotiations with the group and, prudently using unorthodox methods when necessary, secured the safe release of both hostages just 12 hours into the ordeal; despite provocative radio transmissions from the separatists indicating that they intended to attack, the law enforcement officers stood their vigil and withheld fire, allowing Captain Caver to continue negotiations; and

WHEREAS, Those officers were aided in their efforts by a coalition of local, state, and federal entities, including the Parks and Wildlife Department,

the Forest Service, the Department of Criminal Justice, Smith County, the National Guard, the United States Border Patrol, and the Federal Bureau of Investigation; and

WHEREAS, Seven days after the standoff began, the leader of the movement surrendered peacefully; a subsequent search of the compound revealed a disturbing array of weaponry, ammunition, and explosives, underscoring the tragedy that could have ensued if the negotiations had failed; and

WHEREAS, Sworn to uphold, protect, and defend the laws of this state, peace officers are called on to exercise supreme self-control in the face of unpredictable and life-threatening situations, and order in our society rests largely in their ability to remain calm and focused under extreme duress; the officers involved in the Fort Davis incident truly lived up to these exacting standards, and through their actions they set an example of crisis resolution that will undoubtedly serve as a model for law enforcement agencies throughout the nation; now, therefore, be it

RESOLVED, That the 75th Legislature of the State of Texas hereby commend the Department of Public Safety for its effective handling of the Fort Davis incident and extend to all law enforcement officials involved deepest thanks in behalf of their fellow Texans; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the Department of Public Safety as an expression of high regard by the Texas House of Representatives and Senate.

The resolution was read.

On motion of Senator Madla and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Madla was recognized and introduced to the Senate members of the Public Safety Commission and the Texas Rangers.

The Senate welcomed its guests.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 823

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 823** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARONA	BAILEY
GALLEGOS	HILL
LUCIO	TILLERY
WHITMIRE	NAISHTAT
CAIN	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to payroll deductions in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 141.008, Local Government Code, is amended to read as follows:

Sec. 141.008. PAYROLL DEDUCTIONS IN CERTAIN MUNICIPALITIES. (a) Except as provided by Subsection (b), the [~~The~~] governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee's monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees' association named by the employee.

(b) The governing body of a municipality with a population of more than 50,000 shall make the payroll deduction described by Subsection (a) if requested in writing by the employee and if the municipality permits deductions for purposes other than charitable donation, retirement plan contribution, deferred compensation, insurance or tax payment, or garnishment.

(c) Participation in the payroll deduction program by a municipal employee who is on active full-time duty is voluntary.

(d) [~~(c)~~] An employee's written request must:

(1) be set out in a form prescribed and provided by the municipal treasurer or comptroller;

(2) state the amount to be deducted each month; and

(3) direct the municipal treasurer or comptroller to transfer the deducted funds to the designated employees' association.

(e) [~~(d)~~] The amount deducted each month may not exceed the amount stated in the written request. However, the governing body of a municipality having a program under this section may impose and collect an administrative fee from each participating employee in addition to the membership dues that are withheld. The fee must be a reasonable amount to reimburse the municipality for the administrative costs of collecting, accounting for, and disbursing the membership dues.

(f) [~~(e)~~] A request under this section remains in effect until the municipal treasurer or comptroller receives a written notice of revocation in a form prescribed and provided by the treasurer or comptroller and filed by the employee.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 966

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 966** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON	KUEMPEL
GALLEGOS	LONGORIA
TRUAN	KAMEL
BARRIENTOS	MERRITT
	OAKLEY
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2964

Senator Nixon submitted the following Conference Committee Report:

Austin, Texas
May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2964** have

had the same under consideration, and beg to report it back with the recommendation that it do pass.

NIXON	SADLER
CAIN	HARTNETT
GALLEGOS	HILL
GALLOWAY	FINNELL
NELSON	UHER
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE HOUSE BILL 2913 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2913, Relating to the authority of the Health and Human Services Commission to administer and operate the Medicaid managed care program.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2913,** in SECTION 1 of the bill, at the end of added Section 531.021(b), Government Code (Senate Committee Report, page 1, line 22), add "In adopting these rules and standards, the commission shall consult with the agencies that operate the Medicaid program."

MONCRIEF
ZAFFIRINI

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 2913** by striking Section 531.021(c) in SECTION 1 (Senate committee report, page 1, lines 23-27), and by striking all of SECTION 2 from the bill (Senate committee report, page 1, lines 28 through page 2, line 1) and renumbering the subsequent SECTIONS accordingly.

ZAFFIRINI
HARRIS

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 2913** as follows:

(1) In SECTION 3 of the bill, at the end of added Section 533.001, Government Code (Senate Committee Printing, page 2, between lines 28 and 29), add the following:

(7) "Health care service region" or "region" means a Medicaid managed care service area as delineated by the commission.

(2) In SECTION 3 of the bill, in added Section 533.002(5), Government Code (Senate Committee Printing, page 2, lines 44-47), strike ", other than managed care organizations created by political subdivisions with constitutional or statutory obligations to provide health care to indigent patients,".

(3) In SECTION 3 of the bill, in added Section 533.005(6), Government Code, after the semicolon (Senate Committee Printing, page 3, line 59), strike "and".

(4) In SECTION 3 of the bill, at the end of added Section 533.005(7) (Senate Committee Printing, page 3, line 67), strike the period and substitute "; and".

(5) In SECTION 3 of the bill, between added Sections 533.005 and 533.006, Government Code (Senate Committee Printing, page 3, between lines 67 and 68), insert the following:

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid recertification date.

(6) In SECTION 3 of the bill, between added Sections 533.007 and 533.008, Government Code (Senate Committee Printing, page 5, between lines 18 and 19), insert the following:

Sec. 533.0075. RECIPIENT ENROLLMENT. The commission shall:

(1) encourage recipients to choose appropriate managed care plans and primary health care providers by:

(A) providing initial information to recipients and providers in a region about the need for recipients to choose plans and providers not later than the 90th day before the date on which the commission plans to begin to provide health care services to recipients in that region through managed care;

(B) providing follow-up information before assignment of plans and providers and after assignment, if necessary, to recipients who delay in choosing plans and providers; and

(C) allowing plans and providers to provide information to recipients or engage in marketing activities under marketing guidelines established by the commission under Section 533.008 after the commission approves the information or activities;

(2) consider the following factors in assigning managed care plans and primary health care providers to recipients who fail to choose plans and providers:

(A) the importance of maintaining existing provider-patient and physician-patient relationships, including relationships with specialists, public health clinics, and community health centers;

(B) to the extent possible, the need to assign family members to the same providers and plans; and

(C) geographic convenience of plans and providers for recipients; and

(3) retain responsibility for enrollment and disenrollment of recipients in managed care plans, except that the commission may delegate the responsibility to an independent contractor who receives no form of payment from, and has no financial ties to, any managed care organization.

(7) In SECTION 3 of the bill, in added Section 533.008, Government Code (Senate Committee Printing, page 5, line 19), between "GUIDELINES." and "The", insert "(a)".

(8) In SECTION 3 of the bill, at the end of added Section 533.008(4), Government Code, after the semicolon (Senate Committee Printing, page 5, line 32), strike "and".

(9) In SECTION 3 of the bill, at the end of added Section 533.008(5), Government Code (Senate Committee Printing, page 5, line 34), strike the period and substitute "; and".

(10) In SECTION 3 of the bill, between added Sections 533.008 and 533.009, Government Code (Senate Committee Printing, page 5, between lines 34 and 35), insert the following:

(6) face-to-face marketing at public assistance offices by managed care organizations or agents of those organizations.

(b) This section does not prohibit:

(1) the distribution of approved marketing materials at public assistance offices; or

(2) the provision of information directly to recipients under marketing guidelines established by the commission.

(11) In SECTION 3 of the bill, in added Section 533.009(a), Government Code, between "diabetes" and the period (Senate Committee Printing, page 5, line 40), insert ", and use outcome measures to assess the programs".

(12) In SECTION 3 of the bill, after added Section 533.010, Government Code (Senate Committee Printing, page 5, between lines 48 and 49), insert the following:

Sec. 533.011. PUBLIC NOTICE. Not later than the 30th day before the commission plans to issue a request for applications to enter into a contract with the commission to provide health care services to recipients in a region, the commission shall publish notice of and make available for public review the request for applications and all related nonproprietary documents, including the proposed contract.

(13) In SECTION 3 of the bill, between added Subchapters A and B, Chapter 533, Government Code (Senate Committee Printing, page 5, line 49), strike "[Sections 533.011-533.020 reserved for expansion]" and substitute "[Sections 533.012-533.020 reserved for expansion]".

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSHB 2913** as follows:

(1) In SECTION 3 of the bill, strike added Section 533.003, Government Code (senate committee printing, page 2, lines 52-59), and substitute the following:

Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS. In awarding contracts to managed care organizations, the commission shall:

(1) give preference to organizations that have significant participation in the organization's provider network from each health care provider in the region who has traditionally provided care to Medicaid and charity care patients;

(2) give extra consideration to organizations that agree to assure continuity of care for at least three months beyond the period of Medicaid eligibility for recipients; and

(3) consider the need to use different managed care plans to meet the needs of different populations.

(2) In SECTION 3 of the bill, in added Section 533.005(6), Government Code, after the semicolon (senate committee printing, page 3, line 59), strike "and".

(3) In SECTION 3 of the bill, at the end of added Section 533.005(7), Government Code (senate committee printing, page 3, line 67), strike the period and substitute "; and".

(4) In SECTION 3 of the bill, between added Section 533.005, Government Code, and added Section 533.006, Government Code (senate committee printing, page 3, between lines 67 and 68), insert the following:

(8) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal.

(5) In SECTION 3 of the bill, strike added Section 533.006(a)(1), Government Code (senate committee printing, page 4, lines 3-6) and substitute the following:

(1) seek participation in the organization's provider network from:

(A) each health care provider in the region who has traditionally provided care to Medicaid recipients; and

(B) each hospital in the region that has been designated as a disproportionate share hospital under the state Medicaid program; and

ZAFFIRINI
WEST
MADLA

The amendment was read and was adopted by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSHB 2913** as follows:

(1) In SECTION 3 of the bill, strike added Section 533.004, Government Code (Senate committee printing, page 2, line 60, through page 3, line 34), and substitute the following:

Sec. 533.004. MANDATORY CONTRACTS. (a) In providing health care services through Medicaid managed care to recipients in a health care

service region, the commission shall contract with at least one managed care organization in that region that is licensed under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) to provide health care in that region and that is:

(1) wholly owned and operated by a hospital district in that region;

(2) created by a nonprofit corporation that:

(A) has a contract, agreement, or other arrangement with a hospital district in that region or with a municipality in that region that owns a hospital licensed under Chapter 241, Health and Safety Code, and has an obligation to provide health care to indigent patients; and

(B) under the contract, agreement, or other arrangement, assumes the obligation to provide health care to indigent patients and leases, manages, or operates a hospital facility owned by the hospital district or municipality; or

(3) created by a nonprofit corporation that has a contract, agreement, or other arrangement with a hospital district in that region under which the nonprofit corporation acts as an agent of the district and assumes the district's obligation to arrange for services under the Medicaid expansion for children as authorized by Chapter 444, Acts of the 74th Legislature, Regular Session, 1995.

(b) A managed care organization described by Subsection (a) is subject to all terms and conditions to which other managed care organizations are subject, including all contractual, regulatory, and statutory provisions relating to participation in the Medicaid managed care program.

(c) The commission shall make the awarding and renewal of a mandatory contract under this section to a managed care organization affiliated with a hospital district or municipality contingent on the district or municipality entering into a matching funds agreement to expand Medicaid for children as authorized by Chapter 444, Acts of the 74th Legislature, Regular Session, 1995. The commission shall make compliance with the matching funds agreement a condition of the continuation of the contract with the managed care organization to provide health care services to recipients.

(d) Subsection (c) does not apply if:

(1) the commission does not expand Medicaid for children as authorized by Chapter 444, Acts of the 74th Legislature, Regular Session, 1995; or

(2) a waiver from a federal agency necessary for the expansion is not granted.

(2) In SECTION 3 of the bill, strike Subsection (g) (Senate committee printing, page 7, line 9) and substitute the following:

(g) If, on the effective date of this Act, the commission has contracted with a managed care organization to provide health care services through Medicaid managed care to recipients in a region, the commission shall award at least one mandatory contract under Section 533.004, Government Code, as added by this Act, on the renewal date of that contract.

(h) This section takes effect immediately.

GALLEGOS
ZAFFIRINI

The amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSHB 2913**, in SECTION 3 of the bill, by striking added Section 533.022, Government Code (Senate committee printing, page 5, lines 57-67), and substituting the following:

Sec. 533.022. COMPOSITION. A committee consists of representatives from entities and communities in the region as considered necessary by the commission to ensure representation of interested persons, including representatives of:

(1) hospitals;
(2) managed care organizations;
(3) primary care providers;
(4) state agencies;
(5) consumer advocates;
(6) recipients;
(7) rural providers;
(8) long-term care providers;
(9) specialty care providers, including pediatric providers; and
(10) political subdivisions with a constitutional or statutory obligation to provide health care to indigent patients.

MADLA
ZAFFIRINI

The amendment was read and was adopted by a viva voce vote.

CSHB 2913 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 2913 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2913** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

CSHB 2913 was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

SENATE BILL 527 WITH HOUSE AMENDMENT

Senator Patterson called **SB 527** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 527** by striking added Section 614.063, Government Code, in SECTION 1 of the bill (House committee printing page 1, lines 15-18), and substituting the following:

Sec. 614.063. POLYGRAPH EXAMINATION. (a) A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination by the organization employing or appointing the peace officer because the peace officer refuses to submit to a polygraph examination as part of an internal investigation regarding the conduct of the peace officer *unless:*

(1) the complainant submits to and passes a polygraph examination; or

(2) the peace officer is ordered to take an examination under Subsection (d) or (e).

(b) Subsection (a)(1) does not apply if the complainant is physically or mentally incapable of being polygraphed.

(c) For the purposes of this section, a person passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated regarding matters critical to the matter under investigation.

(d) The head of the law enforcement organization that employs or appoints a peace officer may require the peace officer to submit to a polygraph examination under this subsection if:

(1) the subject matter of the complaint is confined to the internal operations of the organization employing or appointing the peace officer;

(2) the complainant is an employee or appointee of the organization employing or appointing the peace officer; and

(3) the complaint does not appear to be invalid based on the information available when the polygraph is ordered.

(e) The head of the law enforcement organization that employs or appoints a peace officer may require the peace officer to submit to a polygraph examination under this subsection if the head of the law enforcement organization considers the circumstances to be extraordinary and the head of the law enforcement organization believes that the integrity of a peace officer or the law enforcement organization is in question. The head of the law enforcement organization shall provide the peace officer with a written explanation of the nature of the extraordinary circumstances and how the integrity of a peace officer or the law enforcement organization is in question.

The amendment was read.

Senator Patterson moved to concur in the House amendment to **SB 527**.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Ogden, Wentworth.

RECESS

On motion of Senator Truan and by unanimous consent, the Senate at 11:58 a.m. recessed until 1:00 p.m. today.

AFTER RECESS

The Senate met at 1:00 p.m. and was called to order by President Pro Tempore Zaffirini.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2918

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2918** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE	PLACE
DUNCAN	EDWARDS
PATTERSON	FARRAR
SHAPIRO	TALTON
SHAPLEIGH	
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 701 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 701** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 701** as follows:

(1) In SECTION 2 of the bill, in Section 66.07, Education Code (page 2, lines 5-6) between "other entities" and "to serve" strike: ", in or outside this state,".

(2) In SECTION 3 of the bill, in Section 85.70, Education Code (page 2, line 24) between "other entities" and "to serve" strike: ", in or outside this state,".

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 701** by a viva voce vote.

SENATE BILL 633 WITH HOUSE AMENDMENT

Senator Brown called **SB 633** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 633**, in SECTION 1 of the bill, in proposed Section 2001.0225(g)(3), Government Code (committee printing page 5, line 10), after "state" insert ", or a sector of the state".

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 633** by a viva voce vote.

PERMISSION TO MEET GRANTED

On motion of Senator Brown and by unanimous consent, the conference committee on **SB 1** was granted permission to meet while the Senate was in session.

SENATORS ANNOUNCED ABSENT-EXCUSED

On motion of Senator Sibley, Senators Armbrister, Brown, and Truan were announced "Absent-excused" on account of important business.

SENATE BILL 877 WITH HOUSE AMENDMENT

Senator Sibley called **SB 877** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 877** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of the practice of dentistry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 1, Article 4544, Revised Statutes, is amended to read as follows:

(a) It shall be the duty of the Board to provide for the examination of all applicants for license to practice dentistry in this State. Each person applying for an examination shall pay to said Board a fee set by the Board and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination provided for by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology,

Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. [~~The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require.~~] The Board shall contract with an independent or regional testing service for any required clinical examination. In the event that the Board uses a regional testing service, the Board is authorized to contract for or otherwise use the services of licensed dentists in this state for the purpose of providing assistance to the regional testing service. The Board shall have the written portion of the examination validated by an independent testing professional.

SECTION 2. Article 4545, Revised Statutes, is amended to read as follows:

Art. 4545. QUALIFICATIONS OF APPLICANTS. Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age and shall present evidence of good moral character and:

(1) proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(2) proof of:

(A) graduation from a dental school that is not accredited by the Commission on Dental Accreditation of the American Dental Association; and

(B) successful completion of training in an American Dental Association approved specialty in an education program that is accredited by the Commission on Dental Accreditation and that consists of at least two years of training as specified by the Council on Dental Education [~~reputable dental college and evidence of good moral character. A dental college shall be held reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each~~].

SECTION 3. Article 4545a, Revised Statutes, is amended to read as follows:

Art. 4545a. LICENSING BY CREDENTIALS[~~; LICENSING OF FOREIGN-TRAINED DENTISTS~~].

[~~Sec. 1.~~] (a) The State Board of Dental Examiners, upon payment by the applicant of a fee set by the Board, shall grant a license to practice dentistry or dental hygiene to any reputable dentist or dental hygienist who:

(1) is licensed in good standing as a dentist or dental hygienist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) has not been the subject of final or pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;

(3) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board according to rules established by the Board;

(4) has passed a national or other examination recognized by the Board relating to dentistry or dental hygiene;

(5) has successfully completed the Board's jurisprudence examination;

(6) has submitted documentation of current cardiopulmonary resuscitation certification; [~~and~~]

(7) has practiced dentistry or dental hygiene:

(A) for a minimum of five years immediately prior to applying; or

(B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for the [~~a minimum of~~] five years immediately preceding the date of applying for the license; and

(8) has met any additional criteria established by Board rule [~~or~~

[~~(C) for two years of obligated service in the state under the National Health Service Corps or other federal scholarship or loan repayment program~~].

(b) In addition to the qualifications of Subsection (a) of this article, a dentist applicant must be endorsed by the board of dentistry of the jurisdiction of current practice.

(c) The Board must complete the processing of an application for a license not later than the 180th day after all documentation and examination results required by this section have been received by the Board or grant a license to the applicant.

[~~Sec. 2. (a) The Board, upon payment by the applicant of a fee set by the Board, shall grant a license to a dentist or dental hygienist who has not graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association if:~~

[~~(1) the dentist or dental hygienist has practiced for *a minimum of* five years immediately prior to applying;~~

[~~(2) the dentist or dental hygienist has not been the subject of final or pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;~~

[~~(3) the Board, through a procedure adopted by rule, has determined that the educational qualifications are equivalent to those required to practice dentistry or dental hygiene in the state; and~~

[~~(4) the dentist or dental hygienist has completed all examinations required by the Board for licensure.~~

[~~(b) The Board must complete the processing of an application for a license not later than the 180th day after all documentation, the determination of educational equivalency, and examination results required by this section have been received by the Board or grant a license to the applicant.~~

[~~(c) An applicant for a license to practice dentistry applying under this section who fails the qualifying clinical examination required by the Board under its rules three times shall be required to attend a two-year program at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association. The Board shall review two-year programs offered to fulfill the requirements of this subsection for educational sufficiency.~~]

SECTION 4. Article 4548c, Revised Statutes, is amended to read as follows:

Art. 4548c. PRACTICE AFTER LICENSE HAS BEEN REVOKED. No person whose license to practice dentistry in this State has been [~~shall be~~] revoked by any district court of this State or by the State Board of Dental Examiners may [~~shall~~] practice or attempt to practice dentistry or dental surgery in this State after such license has been so revoked.

SECTION 5. Article 4548e, Revised Statutes, is amended to read as follows:

Art. 4548e. USE OF TRADE NAME. Any person, corporation [~~It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name unless included as a prominent portion of such name is the proper name used on the license, as issued by the State Board of Dental Examiners, of the dentist or dentists practicing under such corporate, company, association, or trade name. Provided, however, any corporate~~], company, or association may use a corporation, company, association, or trade name. Any advertisement by the corporation, company, association, or trade name must [~~used by a group of dentists in a nonprint medium shall only be required to~~] include prominently the name of at least one dentist practicing under such name. The person, corporation, company, or association shall file with the State Board of Dental Examiners a list of all dentists who practice under the name and a list of each trade name used if the trade name is different from the corporation, company, or association name. A list required under this section must be updated and filed with the Board not later than the 30th day after the date of the change. Each day of violation of this Article shall constitute a separate offense.

SECTION 6. Section 1, Chapter 501, Acts of the 45th Legislature, Regular Session, 1937 (Article 4548h, Vernon's Texas Civil Statutes), is amended by amending Subsections (f) through (j) and adding Subsections (k) and (l) to read as follows:

(f) A complaint received under this article must be filed with the Board and reviewed to determine jurisdiction. If the Board has jurisdiction, the Board shall require an investigation of the complaint to determine the facts concerning the complaint.

(g) The Board shall dispose of all complaints in a timely manner. The Board shall establish a schedule for conducting each phase of a complaint that is under the control of the Board. The schedule shall be kept in the information file for the complaint. A change in the schedule must be noted in the complaint information file.

(h) [~~(g)~~] The Executive Director of the Board shall notify the Board of the number of complaints that extend beyond a two-year time frame for resolution. The Executive Director shall provide the Board with an explanation of the reasons that the complaints have not been resolved. The notice and explanation required shall be provided to the Board periodically at regularly scheduled Board meetings.

(i) [~~(h)~~] The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054(c), Government Code.

(j) [~~(i)~~] Rules adopted under this section must provide the complainant, where applicable and permitted by law, an opportunity to be heard, must provide the licensee an opportunity to be heard, and must require the presence of an attorney to advise the Board or the Board's employees. The attorney must be a member of the Board's legal staff, if the Board has a legal staff. If the Board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

(k) [~~(j)~~] The Board by rule shall develop a system for monitoring license holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the Board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

(l) The Board may only consider a complaint that is filed with the Board not later than the fourth anniversary of the date the complained-of act occurred or of the date the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the complained-of act.

SECTION 7. Sections 2 and 3, Chapter 501, Acts of the 45th Legislature, Regular Session, 1937 (Article 4548h, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The Board shall revoke[~~, cancel,~~] or suspend any license or licenses that may have been issued by such Board, impose a fine on a license holder, place on probation with conditions a person whose license has been suspended, or reprimand a licensee if in the opinion of a majority of such Board any person or persons to whom a license has been issued by said Board to practice dentistry or dental hygiene in this State shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry or dental hygiene in this State, or any of the provisions of Chapter 9, Title 71, Revised Statutes, or any amendments that may hereafter be made thereto, or a rule of the Board. All revocations[~~, cancellations,~~] or suspensions of licenses by the Board shall be made in the manner provided by Chapter 2001, Government Code (Administrative Procedure Act).

(b) Notice of a hearing issued [~~All complaints to be considered~~] by the Board under this article shall be made in writing and shall set out the alleged violations of such Statutes or rules.

(c) [~~All complaints under this article as received shall be filed with the Secretary of the Board or an authorized employee of the Board. All complaints filed with the Board shall be reviewed to determine jurisdiction, and if jurisdiction exists, the Secretary of the Board or designee shall cause an investigation of such complaint to be made to determine the facts in such case. If the facts as determined by such investigation justify further action, the disposition of the complaint shall comply with this article.~~

[~~(d)~~] If a licensee suspension is probated, the Board may require the practitioner:

(1) to report regularly to the Board on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the Board; or

(3) to continue or review professional education until the practitioner attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

(d) [~~(c)~~] If the Board or an executive committee of the Board determines from the evidence or information presented to it that a person licensed under this Act by continuation in practice would constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the Board or the executive committee of the Board shall temporarily suspend the license of that person. The license may be suspended under this section without notice or hearing on the complaint, provided the Board or the executive committee of the Board simultaneously with the temporary suspension requests the State Office of Administrative Hearings to set a date for a hearing on the temporary suspension. A hearing shall be held not later than fourteen (14) days after the date of the suspension unless a continuance is requested by the licensee. A second hearing on the suspension shall be held by the State Office of Administrative Hearings within sixty (60) days after the date the suspension was ordered or after the date specified in the continuance requested by the licensee. The time requirements in this subsection must be adhered to or the suspension is lifted without further order or action.

(e) [~~(f)~~] All proceedings under this section are subject to Chapter 2001, Government Code [~~complaints considered by the Board must be filed with the Board within four (4) years after the date on which the act occurred or within four (4) years after a complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act~~].

Sec. 3. (a) A person aggrieved by a ruling, order, or decision of the Board under this article has the right to appeal as provided by Chapter 2001, Government Code [~~to a district court in the county of his residence or in the county where the alleged offense occurred within thirty (30) days from the service of notice of the action of the Board~~].

(b) [~~The appeal having been properly filed, the court may request of the Board and the Board on receiving the request shall within thirty (30) days prepare and transmit to the court a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with the Texas Rules of Civil Procedure.~~

[~~(c)~~] If an aggrieved person fails to perfect an appeal as provided in this section, the Board's ruling shall become final.

(c) [~~(d)~~] Review by the court shall be by the substantial evidence rule and not de novo.

[~~(e) The court may, in its discretion, permit a person who files an appeal under this section to stay enforcement of penalty or punishment by giving to the court a supersedeas bond that is approved by the court, unless there is a finding of clear, imminent, or continuing harm to a person's physical health or well-being by the State Office of Administrative Hearings in a hearing held under Section 2(c) of this article. If the court sustains the occurrence of the violation, the court may uphold the amount of penalty or punishment assessed~~

~~or may reduce the amount of penalty or punishment assessed. If the court does not sustain the occurrence of the violation, the court shall order that no penalty or punishment is assessed.~~]

SECTION 8. Subsection (b), Article 4548i, Revised Statutes, is amended to read as follows:

(b) Any person who shall violate a provision of Chapter 9, Title 71, Revised Statutes, is liable to the state for a civil penalty in an amount not to exceed $5,000 [~~$2,500~~]. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. On request of the Board, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty. A civil penalty collected under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 9. Chapter 9, Title 71, Revised Statutes, is amended by adding Article 4548k to read as follows:

Art. 4548k. CONTRACTUAL AND ORGANIZATIONAL AGREEMENTS

Sec. 1. (a) A person or organization providing dental services in this state under an agreement or contract that allows another person or organization to control or influence any aspect, including business and professional aspects, of the provision of dental services by the person or organization on request shall report to the Board, under rules adopted by the Board:

(1) information concerning the contract or agreement;

(2) the manner in which fees are billed to a patient;

(3) the manner in which the dental service provider is paid and information, if any, provided to a patient concerning that payment agreement or contract; and

(4) information concerning the nature of the arrangement provided to shareholders of organizations contracting with a dental service provider.

(b) A person or organization practicing dentistry that has one or more dentists practicing with or under the person or organization, regardless of whether the dentist has an ownership interest or an employment or contractual relationship, is responsible for all professional acts done under the name of the person or organization. This article does not affect an individual license holder's responsibilities and rights under this chapter.

Sec. 2. A statute relating to the practice of dentistry in this state may not be construed to prohibit a licensed dentist from maintaining any number of offices in this state if the dentist:

(1) assumes full legal responsibility and liability for the dental services rendered in each of the dentist's offices; and

(2) complies with the requirements prescribed by Board rule.

SECTION 10. Section 1, Article 4549, Revised Statutes, is amended to read as follows:

Sec. 1. The State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a dental license or a dental hygienist license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud, or deception

in the process of examination, or for the purpose of securing a license or certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony [~~involving moral turpitude~~] under the laws of this State or any other State or of the United States.

(e) Proof that the applicant violated any of the provisions of the statutes of the State of Texas relating to the practice of dentistry or any provisions of Chapter 9, Title 71, Revised Statutes, within 12 months before the filing of an application for the license.

SECTION 11. Section 2, Article 4549, Revised Statutes, is amended to read as follows:

Sec. 2. The State Board of Dental Examiners shall have jurisdiction and authority, after notice and hearing, to suspend or revoke a dental license or a dental hygienist license, to impose a fine on a person licensed under this chapter, to place on probation with conditions a person whose license or certificate is suspended, or to reprimand a licensee or certificate holder, and in addition to or in lieu of said suspension, revocation, probation, or reprimand, to assess an administrative penalty as provided for in Article 4548j, Revised Statutes, for any one or more of the following causes:

(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license or certificate of any felony or a misdemeanor involving fraud under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice, [~~or~~] gross incompetency, or failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

(m) Proof of suspension, revocation, probation, reprimand, or other restriction by another State of a license or certificate to practice dentistry or dental hygiene based upon acts by the licensee or certificate holder enumerated in this section.

(n) That the holder thereof has knowingly provided or agreed to provide dental care in a manner which violates any provision of federal or State law regulating a plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any dental care services or regulating the business of insurance.

SECTION 12. Subsection (a), Section 3, Article 4549, Revised Statutes, is amended to read as follows:

(a) If the Board proposes to refuse to examine a person, to suspend or revoke a license, to impose a fine, to place on probation a person whose license has been suspended, or to reprimand a license holder, the person is entitled to a hearing under Chapter 2001, Government Code [~~before the Board~~].

SECTION 13. Article 4549-1, Revised Statutes, is amended to read as follows:

Art. 4549-1. REVOCATION AND SUSPENSION OF LICENSE FOR DRUG-RELATED FELONY CONVICTION. On conviction of a person licensed by the board of a felony under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, or Chapter 483, Health and Safety Code, the board shall, after an administrative hearing conducted in accordance with Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes)~~], in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

SECTION 14. Article 4550, Revised Statutes, is amended to read as follows:

Art. 4550. RECORDS OF THE BOARD

Sec. 1. The Board shall keep records in which shall be registered the name and residence and [~~or~~] place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. Each dentist, dental hygienist, dental laboratory, and dental technician registered with the Board shall timely notify the Board of:

(1) any change of address of the place of business of such [~~the~~] dentist, hygienist, laboratory, or technician; and

(2) any change of employers by such [~~the~~] dentist, hygienist, laboratory, or technician, and any change of owners of the laboratory.

The Board is timely notified if it receives the notice within 60 days after the date the change occurs.

Sec. 2. All of the records and files of the [~~Texas~~] State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and shall be divulged only to persons so investigated upon completion of said investigation. It is not a violation of this section for the Board to share investigation files and records with another state regulatory agency or federal law enforcement agency during the course of a joint investigation or in determining the feasibility of conducting an investigation.

SECTION 15. Subsection (b), Article 4551, Revised Statutes, is amended to read as follows:

(b) The Board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act.

[~~The Board may not set a fee at an amount less than the amount of that fee on September 1, 1993.~~]

SECTION 16. Article 4551a, Revised Statutes, is amended to read as follows:

Art. 4551a. PERSONS REGARDED AS PRACTICING DENTISTRY. Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter, including use of the terms "denturist" or "denturism," which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined, unless otherwise provided by law.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the [~~Texas~~] State Board of Dental Examiners.

(8) Who shall control, attempt to control, influence, attempt to influence, or otherwise interfere with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder, or physical condition. However, nothing herein shall be construed to require any entity to pay for services which are not provided for in a contract or agreement or to exempt any dentist who is a member of a hospital staff from adhering to hospital bylaws, medical staff bylaws, or established policies approved by the governing board and the medical and dental staff of the hospital.

(9) If the person holds the person out to be a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

SECTION 17. Section 11, Chapter 244, General Laws, Acts of the 44th Legislature, Regular Session, 1935 (Article 4551b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The definition of dentistry as contained in Chapter 9 of Title 71, of the Revised Civil Statutes of Texas as amended, shall not apply to:

(1) members of the faculty of a reputable dental or dental hygiene college or school where such faculty members perform their services for the sole benefit of such school or college; or

(2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college; or

(3) persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or

(4) physicians and surgeons legally authorized to practice medicine as defined by the law of this state who do not hold themselves out to the public as practicing dentistry; or

(5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or

(6) those persons who as members of an established church practice healing by prayer only; or

(7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state; or

(8) Dental Health Service Corporations legally chartered under Section A(1), [~~Subsection (1) of~~] Article 2.01, [~~of the~~] Texas Non-Profit [~~Nonprofit~~] Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes); or

(9) dental interns and dental residents as defined and regulated by the [~~Texas~~] State Board of Dental Examiners in its rules and regulations; or

(10) students of a reputable dental hygiene school who practice dental hygiene without pay in strict conformity with the laws of this state regulating the practice of dental hygiene; or

(11) dental assistants who perform the duties permitted by Article 4551e-1, Revised Statutes, in strict conformity with the laws of this state; or

(12) dentists licensed by another state or foreign country who perform clinical procedures only for professional and technical education demonstration purposes, provided that such dentists must first obtain a temporary license for such purpose from the State Board of Dental Examiners.

SECTION 18. Section 2, Chapter 475, Acts of the 52nd Legislature, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. QUALIFICATIONS. A dental hygienist shall be not less than eighteen (18) years of age and a graduate of an accredited high school or hold a certificate of high school equivalency (GED) and be a graduate of a recognized [~~and accredited~~] school or college of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the [~~Texas~~] State Board of Dental Examiners [~~in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations promulgated by the Texas State Board of Dental Examiners~~].

SECTION 19. Subsection (a), Section 5, Chapter 475, Acts of the 52nd Legislature, 1951 (Article 4551e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) It shall be the duty of the Board to provide for the examination of all qualified applicants for licensure as dental hygienists in this State. All applicants for examination shall pay a fee set by the Board to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. An applicant must attach to the application proof that the applicant has successfully completed a current course in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross before the date on which the applicant submits the application or, in the event that the applicant is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. [~~The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require.~~] The Board shall contract with an independent or regional testing service for any required clinical examination. In the event that the Board uses a regional testing service, the Board is authorized to contract for or otherwise use the services of licensed dental hygienists in this State for the purpose of providing assistance to the regional testing service. The Board shall have the written portion of the examination validated by an independent testing professional. The Board shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a license permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

SECTION 20. Subsections (a) and (b), Article 4551e-1, Revised Statutes, are amended to read as follows:

(a) A dental assistant who is not professionally licensed may be [~~is one who is~~] employed by and work [~~works~~] in the office of a licensed[~~, registered,~~] and practicing dentist and perform [~~who performs~~] one or more delegated dental acts under the direct supervision, direction, and responsibility of such dentist. Direct supervision, direction, and responsibility, as used in this article, means that the dentist employing a dental assistant or dentist in charge of a dental assistant is physically present in the dental office when a dental assistant performs a delegated dental act.

(b) A person licensed to practice dentistry may delegate to any qualified and properly trained dental assistant acting under the dentist's direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if, in the opinion of the delegating dentist, the act can be properly and safely performed by the person to whom the dental act is delegated and the act is performed in its customary manner, not in violation of this Act or any other statute, and the person to whom the dental act is delegated does not hold himself out to the public as being authorized to practice dentistry. However, a dentist may not:

(1) delegate an act to an individual who, by order of the Board, is prohibited from performing the act;

(2) delegate the performance of any of the following acts to a person not licensed as a dentist or dental hygienist:

(A) the removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;

(B) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or

(C) any other act the delegation of which is prohibited by the rules of the Board; [~~or~~]

(3) delegate the performance of any of the following acts to a person not licensed as a dentist:

(A) comprehensive examination or diagnosis and treatment planning;

(B) a surgical or cutting procedure on hard or soft tissue;

(C) the prescription of a drug, medication, or work authorization;

(D) the taking of an impression for a final restoration, appliance, or prosthesis;

(E) the making of an intraoral occlusal adjustment;

(F) the performance of direct pulp capping, pulpotomy, or any other endodontic procedure;

(G) the final placement and intraoral adjustment of a fixed or removable appliance; or

(H) the placement of any final restoration; or

(4) delegate the authority to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent to an individual not licensed as:

(A) a dentist with a permit issued by the State Board of Dental Examiners for the procedure being performed, if a permit is required;

(B) a certified registered nurse anesthetist licensed by the Board of Nurse Examiners, only if the delegating dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed, if a permit is required; or

(C) a physician anesthesiologist licensed by the Texas State Board of Medical Examiners [~~(1) the administration of a local anesthetic, parenteral or inhalational sedative agent, or general anesthetic agent~~].

SECTION 21. Subsection (b), Section (6), Article 4551f, Revised Statutes, is amended to read as follows:

(b) As a condition for the renewal of a dental laboratory registration, the applicant must also provide evidence satisfactory to the Board that at least one employee working on the premises of the dental laboratory:

(1) has completed at least 12 [~~10~~] hours of continuing education during the registration period; or

(2) is a certified dental technician.

SECTION 22. Section (8), Article 4551f, Revised Statutes, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) The Board may refuse to issue a certificate of registration, [~~or~~] may suspend or revoke a certificate, may impose a fine, or may probate all or part of a suspension if after a hearing the Board finds that the person applying for or holding a certificate of registration has violated or aided another person in violating any law regulating the practice of dentistry or has required or allowed a person under the direction or control of the applicant or certificate holder to violate any law regulating the practice of dentistry [~~has violated this article~~]. In any complaint or disciplinary action under this article, the Board shall follow the procedures prescribed for dentists and dental hygienists under Article 4549, Revised Statutes.

(g) For purposes of Subsection (a) of this section, a person applying for or holding a certificate of registration includes a person who has a 20 percent or greater ownership interest in or is the general partner or managing partner in a dental laboratory that is registered or for which an application for registration has been filed.

SECTION 23. Article 4551n, Revised Statutes, is amended to read as follows:

Art. 4551n. EMPLOYMENT OF DENTISTS

Sec. 1. (a) The Board shall, on a form and under rules adopted by the Board, approve and certify any health organization to contract with or employ dentists licensed by the Board on application by the organization and presentation of satisfactory proof to the Board that the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or[;] 254c[~~, or 256~~] or as a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B).

(b) Any dentist providing dental services under Subsection (a) of this section [~~article~~] shall provide those services free of charge or at a reduced fee commensurate with the patient's ability to pay in strict compliance with the applicable provisions of 42 U.S.C. Section 254b or[;] 254c[~~, or 256~~].

(c) The Board may, at its discretion, refuse to approve or certify any such health organization making application to the Board if in the Board's determination the applying nonprofit corporation is established or organized or operated in contravention of or with the intent to circumvent any provision of this Act.

Sec. 2. A dentist licensed by the Board may be employed by or contract with a governmental entity providing dental services under federal or state law.

Sec. 3. A dentist licensed by the Board may be employed by or contract with an organization if:

(1) the organization is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) the organization is:

(A) approved by the Board as an organization that provides services to underserved populations for no fee or a reduced fee; or

(B) a clinic that provides dental services primarily to individuals who have AIDS or the human immunodeficiency virus.

SECTION 24. Subsection (a), Section 467.004, Health and Safety Code, is amended to read as follows:

(a) A licensing or disciplinary authority may add a surcharge of not more than $10 [~~$5~~] to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

SECTION 25. Subsection (b), Section 467.0041, Health and Safety Code, is amended to read as follows:

(b) The board may add a surcharge of not more than $10 [~~$5~~] to its license or license renewal fee to fund an approved peer assistance program.

SECTION 26. The following are repealed:

(1) Section 4, Chapter 501, Acts of the 45th Legislature, Regular Session, 1937 (Article 4548h, Vernon's Texas Civil Statutes); and

(2) Subsection (f), Section 2A, Article 4550a, Revised Statutes.

SECTION 27. (a) This Act takes effect September 1, 1997.

(b) The State Board of Dental Examiners shall adopt rules required under this Act not later than December 1, 1997.

(c) The change in law made by this Act regarding a disciplinary proceeding or contested case applies only to a proceeding for a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 28. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Sibley, the Senate concurred in the House amendment to **SB 877** by a viva voce vote.

HOUSE BILL 1820 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1820, Relating to the tuition charged to certain foreign students with financial need at certain components of the Texas State Technical College System and at Texas A&M University—Corpus Christi.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1820** as follows:

ADD on page 1, line 20 (Senate committee printing report) after the word "resides" the following:

or who registers for lower division courses at a community or junior college having a partnership agreement pursuant to Subchapter N of Chapter 51 of this code with an upper-level university and both institutions are located in the county immediately adjacent to the nation in which the foreign student resides.

The amendment was read and was adopted by a viva voce vote.

HB 1820 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Shapiro asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1820 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1820** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 2.

Yeas: Barrientos, Bivins, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nelson, Nixon, Patterson, Ratliff, Shapleigh, Sibley, West, Whitmire, Zaffirini.

Nays: Moncrief, Shapiro.

Absent-excused: Armbrister, Brown, Ogden, Truan, Wentworth.

HB 1820 was read third time and was passed by the following vote: Yeas 24, Nays 2. (Same as previous roll call)

SENATOR ANNOUNCED PRESENT

Senator Armbrister, who had previously been recorded as "Absent-excused," was announced "Present."

HOUSE BILL 2541 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2541, Relating to the regulation of certain scientific breeders.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2541 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2541** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Brown, Ogden, Truan, Wentworth.

HB 2541 was read third time and was passed by a viva voce vote.

SENATORS ANNOUNCED PRESENT

Senators Ogden and Truan, who had previously been recorded as "Absent-excused," were announced "Present."

HOUSE BILL 3061 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3061, Relating to regulation of the import, export, and management of deer; providing penalties.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3061** in SECTION 1 of the bill, proposed Section 43.601, Parks and Wildlife Code (Senate committee printing, page 1, between lines 22 and 23), by adding new Subsection (c) to read as follows:

(c) If a special season with a special bag limit is established by the commission for holders of a deer management permit, the holder of the permit may not receive compensation for granting any other person permission to kill a wild deer during that special season on acreage covered by the permit.

The amendment was read and was adopted by a viva voce vote.

HB 3061 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Zaffirini asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 3061 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3061** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3.

Yeas: Armbrister, Bivins, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley, Truan, West, Whitmire.

Nays: Barrientos, Shapleigh, Zaffirini.

Absent-excused: Brown, Wentworth.

HB 3061 was read third time and was passed by the following vote: Yeas 26, Nays 3. (Same as previous roll call)

SENATOR ANNOUNCED ABSENT-EXCUSED

On motion of Senator Barrientos, Senator Lucio was announced "Absent-excused" on account of important business.

HOUSE BILL 2252 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2252, Relating to certain projects and programs for residents of a colonia.

The bill was read second time.

Senator Truan offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2252** as follows:

1) On page 2, line 2, strike "this section" and substitute "sections (b)(1) and (b)(4) and $600,000 shall be used as specified by sections (b)(2), (b)(3), and (b)(4)"; and

2) On page 2, line 15, strike "the Texas A&M University Colonias Program and".

The committee amendment was read.

On motion of Senator Truan and by unanimous consent, Committee Amendment No. 1 was tabled.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 1

Amend the Senate committee report for **HB 2252** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 2306.589, Government Code, is amended to read as follows:

Sec. 2306.589. COLONIA SET-ASIDE FUND. (a) The department shall establish a fund in the department designated as the colonia set-aside fund.

(b) The department by rule shall provide that an application for assistance in paying for residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system may be submitted after construction of a water supply or sewer service system begins. The department shall approve or disapprove a timely application before construction of the water supply or sewer service is completed in order to eliminate delay in hookups once construction is completed. The department and the Texas Water Development Board shall coordinate the application process for hookup funds under this subsection and under Subchapter L, Chapter 15, Water Code, and shall share information elicited by each agency's application procedure in order to avoid duplication of effort and to eliminate the need for applicants to complete different forms with similar information.

(c) The department may use money in the colonia set-aside fund for specific activities that assist colonias, including:

(1) the operation and activities of the self-help centers established under this subchapter; ~~or~~

(2) reimbursement of colonia advisory committee members for their reasonable expenses in the manner provided by Article 6252-33, Revised Statutes, or the General Appropriations Act; and

(3) funding for the provision of water and sewer service connections in accordance with Subsection (b).

(d) ~~(c)~~ The department may review and approve an application for funding from the colonia set-aside fund that advances the policy and goals of the state in addressing problems in the colonias.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

HB 2252 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2252 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2252** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Brown, Lucio, Wentworth.

HB 2252 was read third time and was passed by a viva voce vote.

HOUSE BILL 99 ON THIRD READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

HB 99, Relating to the funding and operation of certain emergency management and disaster relief programs.

The bill was read third time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 99**, on third reading, as follows:

(1) Insert a new SECTION, appropriately numbered, to read as follows:

SECTION ___. On the effective date of this Act, the disaster contingency fund account is abolished, and the comptroller shall transfer any unencumbered credit in that account to the disaster management fund established as a trust fund in the Texas Treasury Safekeeping Trust Company, as provided under Section 418.073, Government Code, as amended by this Act.

(2) Renumber the subsequent SECTIONS of the bill appropriately.

The amendment was read and was adopted by unanimous consent.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 4

Amend **HB 99**, on third reading, in SECTION 9 of the bill, by inserting a new Subsection (h) to added Section 1.3531, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes), to read as follows:

(h) This section expires September 1, 2000.

The amendment was read and was adopted by unanimous consent.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 5

Amend **HB 99** by Striking Subsection 1.3531(c) and substituting the following:

(c) Notwithstanding any other provision of this Act, including a provision that authorizes a freeze or cap of certain utility rates, the commission shall provide for the adjustment of a public utility, including interexchange telecommunications carriers, and municipally owned electric utility's billings to recover the additional assessment imposed under this section and any additional taxes or fees resulting form that assessment. (committee printing page 4, line 27-33)

The amendment was read.

On motion of Senator Nixon and by unanimous consent, Floor Amendment No. 5 was withdrawn.

HB 99 as amended was finally passed by a viva voce vote.

RECORD OF VOTE

Senator Cain asked to be recorded as voting "Nay" on the final passage of the bill.

SENATORS ANNOUNCED ABSENT-EXCUSED

On motion of Senator Sibley, Senators Armbrister and Truan were announced "Absent-excused" on account of important business.

COMMITTEE SUBSTITUTE HOUSE BILL 172 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 172, Relating to project contract claims against a unit of state government.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend Sec. 1 of **CSHB 172** on page 1 beginning on line 28 by striking after Sec. 2166.001 and before Government code; (3).

The amendment was read and was adopted by a viva voce vote.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 172** as follows:

(1) In Section 111.001(c), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 1, lines 31-33, Senate Committee Printing), strike "to a written contract with a unit of state government for a Project which was entered after competitive bidding" and substitute "to a contract described by Section 111.0015".

(2) In Chapter 111, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 1, between lines 33 and 34, Senate Committee Printing), insert new Section 111.0015 to read as follows:

Sec. 111.0015. SCOPE OF CHAPTER. This chapter applies only to a claim under a written contract for construction or engineering services, including a project contract, that was entered into by a Contractor and a unit of state government after competitive bidding.

(3) In Section 111.002(a), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 1, lines 35-36, Senate Committee Printing), strike "a Project Contract" and substitute "a contract subject to this chapter".

(4) In Section 111.002(b), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 1, lines 41-42, Senate Committee Printing), strike "the Project Contract" and substitute "the contract".

(5) In Section 111.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 1, lines 45-57, Senate Committee Printing), strike Subsection (c) and substitute the following:

(c) The chief administrative officer or another officer of the unit of the state government, if designated in the contract or by the chief administrative officer, shall examine the claim and negotiate in good faith with the Contractor in an effort to resolve the claim. If there is no resolution of the claim within 30 days after the date of receipt of the claim, the parties shall proceed to mediation with an independent mediator selected by the parties. The mediation shall be completed within the ensuing 30 days or within another period as agreed by the parties. The contract may include additional terms for the conduct of a mediation under this chapter, except that the contract may not require the Contractor to waive any remedy the Contractor may have under this chapter. The costs of the mediation shall be borne equally by the parties to the mediation. If the mediation does not produce agreement as to the claim, the chief administrative officer or another officer of the unit of state government, if designated in the contract or by the chief administrative officer, shall respond to the claim, providing the factual and legal basis for the position of the unit of state government as to the claim not later than the 30th day after the date the mediation concludes.

(6) In Section 111.002, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 2, between lines 10 and 11, Senate Committee Printing) insert new Subsection (g) to read as follows:

(g) A determination of an administrative law judge under this section is not subject to appeal under Chapter 2001, Government Code, or any other law.

(7) In Section 111.003(a), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 2, line 13, Senate Committee Printing), strike "the Contract" and substitute "the contract, after taking into consideration any payments made by the unit of state government and any additional charges accepted by the unit of state government".

(8) In Section 111.003(d), Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 2, lines 19-20, Senate Committee Printing), strike "the Project Contract" in each of the two places it appears and substitute "the contract".

(9) In Chapter 111, Civil Practice and Remedies Code, as added by SECTION 1 of the bill (page 2, between lines 21 and 22, Senate Committee Printing), insert the following new Section 111.004:

Sec. 111.004. SOVEREIGN IMMUNITY NOT WAIVED. This chapter does not waive any immunity from suit or liability otherwise applicable to a claim.

(10) In SECTION 3(a) of the bill (page 2, lines 23-24, Senate Committee Printing), in the first sentence, strike "a Project Contract" and substitute "a contract".

(11) In SECTION 3(a) of the bill (page 2, lines 25-26, Senate Committee Printing), in the second sentence, strike "a Project Contract" and substitute "a contract".

(12) In SECTION 3(b) of the bill (page 2, line 30, Senate Committee Printing), strike "a Project Contract" and substitute "a contract".

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 172** as follows:

(1) Strike Subsection (a) of Section 3 of the bill and substitute the following new Subsection (a):

(a) Section 1 of this Act applies only to a suit based on a Contract entered into by a unit of state government on or after the effective date of this Act. A suit based on a Contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

(2) Add the following new Sections 2 through 4 to the bill and renumber existing Sections 2 through 4 accordingly:

SECTION 2. Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.112 to read as follows:

Sec. 201.112. CONTRACT CLAIMS. (a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

(1) Section 22.018;

(2) Chapter 223; or

(3) Chapter 2254, Government Code.

(b) If a person with a claim is dissatisfied with the department's resolution of the claim under the procedures authorized under Subsection (a), the person may request a formal administrative hearing to resolve the claim under Chapter 2001, Government Code.

(c) An administrative law judge's proposal for decision rendered under Chapter 2001, Government Code, shall be submitted to the director for adoption. Notwithstanding any law to the contrary, the director may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge. The director shall provide a written statement containing the reason and legal basis for a change made under this subsection.

(d) The director's final order is subject to judicial review under Chapter 2001, Government Code, under the substantial evidence rule.

(e) This section does not waive state immunity from liability.

SECTION 3. Notwithstanding any other law, the procedure prescribed by Section 2 of this Act shall constitute the exclusive remedy at law for the resolution of a claim governed by that section.

SECTION 4. (a) Sections 2 and 3 of this Act apply to any claim governed by Section 2 of this Act:

(1) filed with the Texas Department of Transportation on or after the effective date of this Act; or

(2) pending before the Texas Department of Transportation on the effective date of this Act.

(b) For purposes of this section, a claim is pending before the Texas Department of Transportation if the claim has been filed, but the claimant has not sought judicial review under Chapter 2001, Government Code.

The amendment was read.

On motion of Senator Cain and by unanimous consent, further consideration of **CSHB 172** was postponed to a time certain of 2:00 p.m. today.

Question—Shall Floor Amendment No. 3 to **CSHB 172** be adopted?

GUEST PRESENTED

Senator Shapleigh was recognized and introduced to the Senate Mayor-elect of El Paso Carlos Ramirez.

The Senate welcomed Mayor-elect Ramirez.

SENATOR ANNOUNCED PRESENT

Senator Lucio, who had previously been recorded as "Absent-excused," was announced "Present."

(Senator Sibley in Chair)

HOUSE BILL 3234 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3234, Relating to the transfer of municipal hospital authority assets for health-related projects.

The bill was read second time.

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3234** as follows:

(1) In SECTION 2, Subsection (a) of Section 262.005, Health and Safety Code (page 1, line 14, engrossed version), after "body" strike "and the authority provide" and add "provides".

(2) In SECTION 2, Subsection (a) of Section 262.005, Health and Safety Code (page 1, line 17, engrossed version), after "The" strike "authority and the".

The committee amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3234**, on page 1, as follows:

1) DELETE lines 32-37, and substitute as follows:

"The authority and the governing body shall not transfer the assets of the authority without due compensation except to the municipality or county that created the authority to fund or support health-related projects."

2) DELETE lines 40-44, and substitute as follows:

"The authority shall transfer proceeds from the sale of a hospital or part of a hospital to the municipality or county that created the authority to fund or support health-related projects."

3) DELETE lines 47-51, and substitute as follows:

"Sec. 262.037. HEALTH-RELATED PROJECTS. An Authority shall transfer assets to the municipality or county that created the authority to fund or support health-related projects."

The amendment was read and was adopted by a viva voce vote.

HB 3234 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3234 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3234** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Armbrister, Brown, Truan, Wentworth.

HB 3234 was read third time and was passed by the following vote: Yeas 27, Nays 0. (Same as previous roll call)

HOUSE BILL 629 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 629, Relating to recruitment requirements for hiring personnel at the Texas Alcoholic Beverage Commission.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 629** by striking SECTION 1 and adding a new SECTION 1 to read as follows:

Amend Section 5.102, Alcoholic Beverage Code, by striking subsection (1) and renumbering subsequent subsections accordingly.

The amendment was read and was adopted by a viva voce vote.

HB 629 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 629 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 629** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Armbrister, Brown, Truan, Wentworth.

HB 629 was read third time and was passed by the following vote: Yeas 27, Nays 0. (Same as previous roll call)

GUESTS PRESENTED

Senator Patterson was recognized and introduced to the Senate representatives from the Johnson Space Center in Houston.

The Senate welcomed its guests.

GUEST PRESENTED

Senator Barrientos was recognized and introduced to the Senate Waggoner Carr, former Attorney General.

The Senate welcomed Mr. Carr.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1865

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 24, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1865** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER	R. LEWIS
BROWN	COUNTS
BIVINS	CULBERSON
NIXON	PUENTE
WENTWORTH	WALKER
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the administration, management, operation, and authority of water districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.014, Water Code, is amended to read as follows:

Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. (a) If a petition is filed under Section 36.013, the commission shall give notice of an application as required by Section 49.011(a) and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011 [~~The notice of hearing on a petition must include a statement of the nature and purpose of the proposed district and the date, time, and place of hearing~~].

(b) [~~The notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.~~

[~~(c) Notice of the hearing shall be published in a newspaper with general circulation in the county or counties in which the proposed district is to be located. Notice must be published not later than the 30th day before the date of the hearing.~~

[~~(d)~~] If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

SECTION 2. Subchapter B, Chapter 49, Water Code, is amended by adding Section 49.011 to read as follows:

Sec. 49.011. NOTICE APPLICABLE TO CREATION OF A DISTRICT BY THE COMMISSION. (a) On receipt by the commission of all required documentation associated with an application for creation of a district by the commission under Chapter 36, 50, 51, 54, 55, 58, 65, or 66, the commission shall issue a notice indicating that the application is administratively complete.

(b) The commission by rule shall establish a procedure for public notice and hearing of applications. The rules must require an applicant to publish the notice issued by the commission under Subsection (a) once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date on which the commission may act on the application.

(c) The commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under Subsection (b).

(d) If the commission determines that a public hearing is necessary, the commission shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this section.

SECTION 3. Section 49.057(e), Water Code, is amended to read as follows:

(e) The board shall require an officer, employee, or consultant, including a bookkeeper, financial advisor, or system operator, who routinely collects, pays, or handles any funds of the district to furnish good and sufficient bond,

payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The board may require a consultant who does not routinely collect, pay, or handle funds of the district to furnish a bond. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

SECTION 4. Section 49.103, Water Code, is amended by amending Subsections (e) and (f) and adding Subsection (g) to read as follows:

(e) Section 49.002 notwithstanding, in all areas of conflict the provisions of Subsections (a) and [~~Subsection~~] (b) shall take precedence over all prior statutory enactments.

(f) This section does not apply to:

(1) any special law district or authority that is not required by the law creating the district or authority to elect its directors by the public; or

(2) a special utility district operating under Chapter 65.

(g) A district may, if required under this section to change the terms of office of directors to four-year terms or to change the date on which the district holds a director election, extend the terms of office of directors serving the district on the effective date of H.B. No. 2236, Acts of the 75th Legislature, Regular Session, 1997, to continue the terms until the next appropriate election date in an even-numbered year. A district that is required under this section to change the terms of office of directors to staggered terms may require directors of the district to draw lots to achieve staggered terms.

SECTION 5. Section 49.106, Water Code, is amended by adding Subsection (d) to read as follows:

(d) A bond election may be called as a result of an agreement to annex additional territory into the district.

SECTION 6. Section 49.108, Water Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) A district may make payments under a contract from taxes other than operation and maintenance taxes after the provisions of the contract have been approved by a majority of the qualified voters [~~electors~~] voting at an election held for that purpose. A contract approved by the qualified voters of a district may contain a provision stating that the contract may be modified or amended by the board without voter approval.

(e) A district that is required under Section 49.181 to obtain approval by the commission of the district's issuance of bonds must obtain approval by the executive director before the district enters into an obligation under this section to collect tax for debt that exceeds three years. This subsection does not apply to contract taxes that are levied to pay for a district's share of bonds that have been issued by another district and approved by the commission.

SECTION 7. Section 49.153, Water Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) Except as provided by Subsection (e), a [~~A~~] district may not execute a note for a term longer than three years unless the commission issues an order approving the note.

(e) Subsection (c) does not apply to:

(1) a note issued to and approved by the:

(A) Farmers Home Administration;

(B) United States Department of Agriculture; or

(C) Texas Water Development Board; or

(2) a district described by Section 49.181(h).

SECTION 8. Section 49.181(h), Water Code, is amended to read as follows:

(h) This section does not apply to a district if:

(1) the district's boundaries include one entire county;

(2) the district was created by a special Act of the legislature and:

(A) the district is located entirely within one county;

(B) entirely within one or more home-rule municipalities;

(C) the total taxable value of the real property and improvements to the real property zoned by one or more home-rule municipalities for residential purposes and located within the district does not exceed 25 percent of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(D) the district was not required by law to obtain commission approval of its bonds before the effective date of this section;

(3) the district is a special water authority; or

(4) the district is governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, [~~and~~] sewer, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function.

SECTION 9. Subchapter F, Chapter 49, Water Code, is amended by adding Section 49.186 to read as follows:

Sec. 49.186. AUTHORIZED INVESTMENTS; SECURITY FOR FUNDS. (a) All bonds, notes, and other obligations issued by a district shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) A district's bonds, notes, and other obligations are eligible and lawful security for all deposits of public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, notes, and other obligations when accompanied by any unmatured interest coupons attached to them.

SECTION 10. Section 49.198(a), .Water Code, is amended to read as follows:

(a) A district [~~that is not collecting taxes~~] may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $100,000 during the fiscal period; and

(3) the district's cash and temporary investments were not in excess of $100,000 at any time during the fiscal period.

SECTION 11. Section 49.211, Water Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A district that is authorized by law to engage in drainage or flood control activities may adopt:

(1) a master drainage plan, including rules relating to the plan and design criteria for drainage channels, facilities, and flood control improvements;

(2) rules for construction activity to be conducted within the district that:

(A) reasonably relate to providing adequate drainage or flood control; and

(B) use generally accepted engineering criteria; and

(3) reasonable procedures to enforce rules adopted by the district under this subsection.

(d) If a district adopts a master drainage plan under Subsection (c)(1), the district may adopt rules relating to review and approval of proposed drainage plans submitted by property developers. A district that reviews a proposed drainage plan under rules adopted under this subsection shall, if the district fails to approve the proposed plan, prepare a written report that identifies the areas that are not in compliance with the district's master drainage plan or rules adopted under Subsection (c).

SECTION 12. Section 49.212(d), Water Code, is amended to read as follows:

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local Government Code. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities that (i) does not exceed three times the actual and reasonable costs to the district for such tap or connection [~~work~~] or (ii) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district, shall not be deemed [~~or considered~~] to be an impact fee under Chapter 395, Local Government Code.

SECTION 13. Section 49.218(a), Water Code, is amended to read as follows:

(a) A district or a water supply corporation may acquire land, an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law.

SECTION 14. Sections 49.226(a) and (b), Water Code, are amended to read as follows:

(a) Any personal property valued at more than $300 or any land or[;] interest in land[~~, or personal property~~] owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, or property of larger configuration that has been subject to encroachments by abutting property owners for more than 25 years may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, shall not apply to this subsection.

SECTION 15. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.2261 to read as follows:

Sec. 49.2261. PURCHASE, SALE, OR OTHER EXCHANGE OF WATER OR WATER RIGHTS. Notwithstanding any other law, the district may:

(1) purchase, acquire, sell, transfer, lease, or otherwise exchange water or water rights under an agreement between the district and a person or entity that contains terms that are considered advantageous to the district; and

(2) employ agents, consultants, brokers, professionals, or other persons that the board determines are necessary or appropriate to conduct a transaction described by Subdivision (1).

SECTION 16. Sections 49.231(e) and (g), Water Code, are amended to read as follows:

(e) [~~The commission shall hold a hearing on an application submitted under Subsection (c).~~] Notice of an application submitted under Subsection (c) [~~the hearing~~] shall be published by the district in a form provided by the commission. The district shall publish notice in a newspaper

of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The district shall also send notice of the application [~~The first publication must occur not later than the 30th day before the date of the hearing. The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing~~] by certified mail, return receipt requested, to each owner of undeveloped property in the district. On the date the application is filed, the district's tax assessor and collector shall certify to the district the names of the persons owning undeveloped land in the district as reflected by the most recent certified tax roll of the district. Notice of the application [~~hearing~~] must be sent by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any application for standby fees [~~hearings~~]. [~~To be effective, the written request must be received by the district not later than the 60th day before the date of the hearing.~~] The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description. The commission may act on an application without conducting a hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following publication of the notice or receipt of mail containing the notice under this subsection.

(g) The [~~After a hearing on an application under Subsection (e), the~~] commission shall issue an order approving or disapproving the application. The commission shall retain a copy of the order and send a copy of the order to the district.

SECTION 17. Section 49.232, Water Code, is amended to read as follows:

Sec. 49.232. LABORATORY AND ENVIRONMENTAL SERVICES. A district may contract with any person, within or without the boundaries of the district, to provide or receive laboratory or environmental services related to environmental, health, or drinking water testing.

SECTION 18. The heading to Subchapter I, Chapter 49, Water Code, is amended to read as follows:

SUBCHAPTER I. CONSTRUCTION, EQUIPMENT, MATERIALS, AND MACHINERY CONTRACTS

SECTION 19. Section 49.273, Water Code, is amended to read as follows:

Sec. 49.273. [~~Construction~~] CONTRACT AWARD. (a) The board shall contract for construction and repair and renovation of district facilities and for the purchase of equipment, materials, machinery, and all things that constitute or will constitute the plant, works, facilities, or improvements of the district in accordance with this section. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement and the advertisement shall state the location at which these documents may be reviewed.

(b) A [~~construction~~] contract may cover all the work to be provided for [~~by~~] the district or the various elements of the work may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the work will be completed [~~constructed~~] in stages over a period of years.

(c) A [~~construction~~] contract may provide for the payment of a total sum that is the completed cost of the work or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers, or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons that, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plants, improvements, facilities, works, equipment, and appliances.

(d) For [~~construction~~] contracts for $25,000 or more, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers circulated in each county in which part of the district is located. If one newspaper meets both of these requirements, publication in such newspaper is sufficient. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice shall be published once a week for three consecutive weeks before the date that the bids are opened, and the first publication shall be not later than the 21st day before the date of the opening of the sealed bids.

(e) For [~~construction~~] contracts for $15,000 or more but less than $25,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

(f) For [~~construction~~] contracts of less than $15,000, the board is not required to advertise or seek competitive bids.

(g) The board may not subdivide work to avoid the advertising requirements specified in this section.

(h) The board may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.

(i) Change orders to contracts may be issued only as a result of unanticipated conditions encountered during construction, repair, or renovation or changes in regulatory criteria or to facilitate project coordination with other political entities.

(j) The board is not required to advertise or seek competitive bids for the repair of district facilities by the district's operator if the cost of the repair is less than or equal to the advertising requirements of this section [~~The provisions of this subchapter do not apply to contracts for personal or professional services or for a utility service operator or to contracts made by a district engaged in the distribution and sale of electric energy to the public.~~

[~~(k) The provisions of this subchapter do not apply to high technology procurements. The provisions of Sections 252.021(a) and 252.042, Local Government Code, shall apply to high technology procurements~~].

SECTION 20. Subchapter I, Chapter 49, Water Code, is amended by adding Section 49.278 to read as follows:

Sec. 49.278. NONAPPLICABILITY. (a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public; or

(4) high technology procurements.

(b) Sections 252.021(a) and 252.042, Local Government Code, apply to high technology procurements.

SECTION 21. Section 49.301, Water Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxes that have been voted but are unissued, the board shall [~~may~~] require the petitioner or petitioners to assume their share of the outstanding bonds, notes, or other obligations and the voted but unissued tax bonds of the district and authorize the board to levy a tax on their property in each year while any of the bonds, notes, or other obligations payable in whole or in part from taxation are outstanding to pay their share of the indebtedness.

(g) An order issued by the board under this section is not required to include all of the land described in the petition if the board determines that a change in the description is necessary or desirable.

SECTION 22. Section 49.302(f), Water Code, is amended to read as follows:

(f) A copy of the order annexing land to the district, [~~signed by a majority of the members of the board and~~] attested by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

SECTION 23. Section 49.351, Water Code, is amended by adding Subsection (k) to read as follows:

(k) In this section, "fire-fighting activities" means all of the customary and usual activities of a fire department, including fire suppression, fire prevention, training, safety education, maintenance, communications, medical emergency services, photography, and administration.

SECTION 24. Section 49.455(b), Water Code, is amended to read as follows:

(b) The information form filed by a district under this section shall include:

(1) the name of the district;

(2) the complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of district taxes on property located in the district;

(4) the total amount of bonds that have been approved by the voters and which may be issued by the district (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity);

(5) the aggregate initial principal amount of all bonds of the district payable in whole or part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) that have been previously issued [~~and remain outstanding~~];

(6) whether a standby fee is imposed by the district and, if so, the amount of the standby fee;

(7) the date on which the election to confirm the creation of the district was held if such was required;

(8) a statement of the functions performed or to be performed by the district; and

(9) the particular form of Notice to Purchasers required by Section 49.452 to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district.

If a district has not yet levied taxes, a statement to such effect together with the district's most recent projected rate of debt service tax shall be substituted for Subdivisions (3) and (4).

SECTION 25. Section 51.028, Water Code, is amended by amending the heading and Subsection (a) to read as follows:

Sec. 51.028. MULTI-COUNTY DISTRICT: NOTICE AND [~~OF~~] HEARING. (a) When a petition is filed, the commission shall give notice of an application [~~a hearing~~] in the manner provided in Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under that section [~~51.018 of this code~~].

SECTION 26. Subchapter B, Chapter 53, Water Code, is amended by adding Section 53.020 to read as follows:

Sec. 53.020. TEMPORARY SUPERVISORS; QUALIFICATIONS. (a) If the commissioners court grants a petition presented under Section 53.013, the court shall appoint five temporary supervisors to serve on the board of the district until permanent supervisors are elected.

(b) A temporary supervisor appointed under Subsection (a) shall execute a bond as required under Section 49.055 and take the oath of office.

(c) After the commissioners court appoints five temporary supervisors under Subsection (a), the temporary supervisors shall meet and organize.

SECTION 27. Section 54.018, Water Code, is amended to read as follows:

Sec. 54.018. NOTICE AND HEARING ON DISTRICT CREATION [~~ESTABLISHING A DATE OF HEARING~~]. If a petition is filed under Section 54.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011 [~~On the filing of a petition, the commission or someone authorized by the commission, shall fix a date, time, and place at which the petition shall be heard and shall issue notice of the date, time, and place of hearing. The notice shall inform all persons of their right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue~~].

SECTION 28. Section 54.020(a), Water Code, is amended to read as follows:

(a) If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and accept evidence [~~At the hearing, the commission shall examine the petition to ascertain its sufficiency, and any person interested may appear before the commission in person or by attorney and offer testimony~~] on the sufficiency of the petition and whether the project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

SECTION 29. Sections 54.021(a) and (e), Water Code, are amended to read as follows:

(a) If the commission finds [~~After the hearing of the petition if it is found~~] that the petition conforms to the requirements of Section 54.015 [~~of this code~~] and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested a hearing under Section 49.011 [~~notice of hearings as provided in Section 54.019 of this code~~].

SECTION 30. Section 54.102, Water Code, is amended to read as follows:

Sec. 54.102. QUALIFICATIONS FOR DIRECTORS. To be qualified to serve as a director, a person shall be at least 18 [~~21~~] years old, a resident citizen of the State of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

SECTION 31. Section 54.774(b), Water Code, is amended to read as follows:

(b) Except as provided in Subsection (a) [~~of this section~~], a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as authorized elsewhere in this code for the acquisition, development, and maintenance of other facilities of the district. Without limiting the foregoing, a district may charge fees directly to the users of recreational facilities and to water and wastewater customers of the district, regardless of whether the customers are located within or outside the boundaries of the district, to pay for all or part of the cost of their development and maintenance. For purposes of enforcing payment of an unpaid fee charged under this subsection, the district may:

(1) seek legal restitution of the unpaid fee; and

(2) refuse use of a recreational facility to the person who owes the unpaid fee, except that the district may not discontinue use of other facilities or services.

SECTION 32. Section 54.802(b), Water Code, is amended to read as follows:

(b) The board shall adopt a proposed plan for improvements in the defined area or to serve the designated property in the manner provided by Section 49.106 [~~Sections 54.506-54.507 of this code~~].

SECTION 33. Section 54.806(a), Water Code, is amended to read as follows:

(a) Before the adopted plans may become effective, they must be approved by the voters in the defined area or within the boundaries of the designated property. The election shall be conducted as provided by Section 49.106 [~~this chapter~~] for an election to authorize the issuance of bonds.

SECTION 34. Section 55.040, Water Code, is amended to read as follows:

Sec. 55.040. MULTI-COUNTY DISTRICT: PETITION. Creation of a district composed of land in two or more counties may be initiated by presenting a petition to the commission signed by the owners of more than half the land in the proposed district or by 50 qualified property taxpaying electors of the territory of the proposed district. The petition shall describe the boundaries of the proposed district and[~~;~~] request an order on [~~a hearing to determine~~] the advisability of creating the district[~~;~~] and [~~request~~] an order for an election.

SECTION 35. Section 55.042, Water Code, is amended to read as follows:

Sec. 55.042. MULTI-COUNTY DISTRICT: HEARING. If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and [~~At the hearing,~~] any person whose land would be affected by creation of the district may appear and support or oppose creation of the proposed district, and may offer competent testimony to show that the district would or would not serve a beneficial purpose, be practicable, or accomplish the purposes intended.

SECTION 36. Section 58.027, Water Code, is amended by amending the heading and Subsection (a) to read as follows:

Sec. 58.027. MULTICOUNTY DISTRICT: CONSIDERATION [~~HEARING~~] BY COMMISSION. (a) The commission shall have exclusive jurisdiction and power to consider [~~hear~~] and determine all petitions for creation of a district that will include land or property located in two or more counties.

SECTION 37. Section 58.028, Water Code, is amended to read as follows:

Sec. 58.028. MULTICOUNTY DISTRICT: NOTICE AND [~~OF~~] HEARING ON DISTRICT CREATION. [~~(a)~~] When a petition is filed, the commission shall give notice of an application [~~a hearing~~] in the manner provided in Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under that section [~~58.018 of this code~~].

[~~(b) The notice shall be posted at the courthouse door, on the bulletin board used for posting legal notices, in each county in which the district may be located.~~

[~~(c) The notice shall be published in one or more newspapers with general circulation in the area of the proposed district.~~]

SECTION 38. Section 58.030, Water Code, is amended to read as follows:

Sec. 58.030. MULTICOUNTY DISTRICT: CONSIDERATION BY [~~HEARING OF~~] COMMISSION; PROCEDURE. (a) The commission shall [~~hear,~~] consider[~~;~~] and determine on the issues a petition filed under Section 58.028 [~~of this code~~].

(b) The [~~At the hearing of the petition, the~~] commission shall be governed by the provisions of Section 58.021 [~~of this code~~].

SECTION 39. Section 59.007(a), Water Code, is amended to read as follows:

(a) If [~~after the hearing of the petition~~] the commission finds after considering the petition that the petition conforms to the requirements of this chapter and that the creation of the district would be of benefit to the territory to be included in the district, the commission shall issue an order granting the petition for creation. If the commission finds that part of the territory included in the proposed district will not benefit from the creation of the district, the commission shall exclude that territory from the proposed district and redefine the proposed district's boundaries accordingly.

SECTION 40. Section 65.018, Water Code, is amended to read as follows:

Sec. 65.018. NOTICE AND HEARING ON DISTRICT CREATION [~~*ESTABLISHING DATE OF HEARING*~~]. If a resolution is filed under Section 65.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011 [~~(a) On the filing of a resolution, the commission shall set a date, time, and place at which the resolution will be heard and shall issue notice of the date, time, and place of hearing.~~

[~~(b) The notice shall inform all persons of their right to appear and present evidence and testify for or against the material included in the resolution, the form of the resolution, the necessity and feasibility of the water supply corporation's request for conversion, and the benefits to accrue from conversion~~].

SECTION 41. Section 65.020(a), Water Code, is amended to read as follows:

(a) If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and accept evidence [~~At the hearing, the commission shall examine the resolution to determine if it is sufficient, and any person interested may appear before the commission in person or by attorney and offer testimony~~] on the sufficiency of the resolution and whether or not the request for conversion is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

SECTION 42. Section 65.021(a), Water Code, is amended to read as follows:

(a) If [~~After the hearing on the resolution, if~~] the commission finds that the resolution conforms to the requirements of Section 65.015 [~~of this code~~] and that the request for conversion is feasible and practicable and is necessary and would be a benefit to the land proposed to be included in the district, the commission shall make these findings in an order and shall authorize the creation of the district on approval at the confirmation and directors' election called and held under this subchapter.

SECTION 43. Section 65.103, Water Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The method for determining the initial terms for each of the directors constituting the initial board shall be determined by the temporary directors, and the terms must be clearly stated on the ballot for the confirmation and directors' election. [~~At subsequent elections in each following year in which there is an election, the election must be held on the same uniform election date as the confirmation and directors' election, and the terms of the directors being elected must be stated on the ballot.~~]

(d) Notwithstanding Sections 41.001 and 41.003, Election Code, the board may hold an election to elect directors on any date determined by the board. The terms of directors must be stated on the ballot.

SECTION 44. Section 66.018, Water Code, is amended to read as follows:

Sec. 66.018. NOTICE AND HEARING ON DISTRICT CREATION. If a petition is filed under Section 66.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing if the commission determines that a hearing is necessary under Section 49.011 [~~(a) On receiving a petition to create a district, the commission or a person designated by it shall set a date for a hearing on the petition.~~

[~~(b) After a date is set for the hearing, the executive director shall give notice of the hearing and the commission shall hold the hearing and issue an order stating its final decision in the manner provided by Chapter 2001, Government Code. In addition to other notice required by law, the executive director shall publish notice in a newspaper with general circulation in the area of the proposed district once a week for two consecutive weeks, the first publication to be made at least 30 days before the date set for the hearing~~].

SECTION 45. Section 66.019(a), Water Code, is amended to read as follows:

(a) After considering the petition [~~the hearing~~], the commission shall grant the petition if it finds that:

(1) the petition conforms to the requirements of Sections 66.014 and 66.015 [~~of this code~~]; and

(2) the projects proposed by the district are feasible and practicable, are necessary, and will be a benefit to land included in the district.

SECTION 46. Section 6.003(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) The following are exempt from the appeal bond requirements:

(1) a water improvement district, a water control and improvement district, an irrigation district, a conservation and reclamation district, or a water control and preservation district organized under state law;

(2) a levee improvement district organized under state law; [~~and~~]

(3) a drainage district organized under state law; and

(4) an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

SECTION 47. Section 16.061, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.061. RIGHTS NOT BARRED. (a) A right of action of this state or a political subdivision of the state, including a county, an incorporated city or town, a navigation district, a municipal utility district, a port authority, an entity acting under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes), [~~or~~] a school district, or an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, is not barred by any of the following sections: 16.001-16.004, 16.006, 16.007, 16.021-16.028, 16.030-16.032, 16.035-16.037, 16.051, 16.062, 16.063, 16.065-16.067, 16.070, 16.071, 31.006, or 71.021.

(b) In this section:

(1) "Navigation district" means a navigation district organized under Section 52, Article III, [~~Section 52,~~] or Section 59, Article XVI, [~~Section 59, of the~~] Texas Constitution.

(2) "Port authority" has the meaning assigned by Section 60.402, Water Code.

(3) "Municipal utility district" means a municipal utility district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

SECTION 48. Section 41.031(a), Election Code, is amended to read as follows:

(a) Except as provided by Section 41.033, the [~~The~~] polls shall be opened at 7 a.m. for voting and shall be closed at 7 p.m.

SECTION 49. Subchapter B, Chapter 41, Election Code, is amended by adding Section 41.033 to read as follows:

Sec. 41.033. EARLY CLOSING OF CERTAIN POLLS. Notwithstanding Section 41.031(a), an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, may close the polls before 7 p.m. in an election held by the entity if:

(1) the entity has fewer than 50 qualified voters; and

(2) the number of ballots cast in the election equals the number of qualified voters.

SECTION 50. Section 140.006, Local Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsections [~~Subsection~~] (c) and (e), the presiding officer of a governing body shall submit a financial statement prepared under Section 140.005 to a newspaper in each county in which the district or any part of the district is located.

(e) This section does not apply to an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

SECTION 51. Section 191.0525(d), Natural Resources Code, is amended to read as follows:

(d) A project for a county, [~~or~~] municipality, or an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires advance project review only if the project affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a designated historic district or recorded archeological site.

SECTION 52. Section 1.04(3), Tax Code, is amended to read as follows:

(3) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land; [~~or~~]

(B) a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or

(C) for purposes of an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution:

(i) subdivision of land by plat;

(ii) installation of water, sewer, or drainage lines; or

(iii) paving of undeveloped land.

SECTION 53. Section 26.012, Tax Code, is amended by amending Subdivisions (8) and (17) to read as follows:

(8) "Debt service" means the total amount expended or to be expended by a taxing unit from property tax revenues to pay principal of and interest on debts or other payments required by contract to secure the debts and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates incurring in the next calendar year.

(17) "New property value" means:

(A) the total taxable value of property added to the appraisal roll in the current year by annexation and improvements listed on the appraisal roll that were made after January 1 of the preceding tax year, including personal property located in new improvements that was brought into the unit after January 1 of the preceding tax year; [~~and~~]

(B) property value that is included in the current total value for the tax year succeeding a tax year in which any portion of the value of the property was excluded from the total value because of the application of a tax abatement agreement to all or a portion of the property, less the value of the property that was included in the total value for the preceding tax year; and

(C) for purposes of an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, property value that is included in the current total value for the tax year succeeding a tax year in which the following occurs:

(i) subdivision of land by plat;

(ii) installation of water, sewer, or drainage lines; or

(iii) paving of undeveloped land.

SECTION 54. Section 26.04(e), Tax Code, is amended to read as follows:

(e) By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the rates to the governing body. He shall deliver by mail to each property owner in the unit or publish in a newspaper in the form prescribed by the comptroller:

(1) the effective tax rate, the rollback tax rate, and an explanation of how they were calculated;

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation, except that for a school district, estimated funds necessary for the operation of the district prior to the receipt of the first state education aid payment in the succeeding school year shall be subtracted from the estimated fund balances;

(3) a schedule of the unit's debt obligations showing:

(A) the amount of principal and interest that will be paid to service the unit's debts in the next year from property tax revenue, including payments of lawfully incurred contractual obligations providing security for the payment of the principal of and interest on bonds and other evidences of indebtedness issued on behalf of the unit by another political subdivision and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates to incur in the next calendar year;

(B) the amount by which taxes imposed for debt are to be increased because of the unit's anticipated collection rate; and

(C) the total of the amounts listed in Paragraphs (A)-(B), less any amount collected in excess of the previous year's anticipated collections certified as provided in Subsection (b) [~~of this section~~];

(4) the amount of additional sales and use tax revenue anticipated in calculations under Section 26.041 [~~of this code~~];

(5) in the year that a taxing unit calculates an adjustment under Section 26.04(k) or (l) [~~of this code~~], the unit shall publish a schedule that includes the following elements:

(A) the name of the unit discontinuing the department, function, or activity;

(B) the amount of property tax revenue spent by the unit listed under Paragraph (A) of this subsection to operate the discontinued department, function, or activity in the 12 months preceding the month in which the calculations required by this chapter are made; and

(C) the name of the unit that operates a distinct department, function, or activity in all or a majority of the territory of a taxing unit that has discontinued operating the distinct department, function, or activity; and

(6) in the year following the year in which a taxing unit raised its rollback rate as required by Section 26.04(l) [~~of this code~~], the taxing unit shall publish a schedule that includes the following elements:

(A) the amount of property tax revenue spent by the unit to operate the department, function, or activity for which the taxing unit raised the rollback rate as required by Section 26.04(l) [~~of this code~~] for the 12 months preceding the month in which the calculations required by this chapter are made; and

(B) the amount published by the unit in the preceding tax year under Section 26.04(e)(5)(B) [~~of this code~~].

SECTION 55. Sections 50.501, 51.030, 51.409, 53.071, 54.019, 54.511, 54.515, 55.041, and 65.019, Water Code, and Section 42.042(e), Local Government Code, are repealed.

SECTION 56. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATOR ANNOUNCED ABSENT-EXCUSED

On motion of Senator Barrientos, Senator Lucio was announced "Absent-excused" on account of important business.

HOUSE CONCURRENT RESOLUTION 86 ON SECOND READING

On motion of Senator Haywood and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

HCR 86, Requesting the placement of a marker in the Texas State Cemetery in memory of the Honorable Dave Allred.

The resolution was read second time and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Carona and by unanimous consent, the vote by which **HB 99** was finally passed was reconsidered.

HB 99, Relating to the funding and operation of certain emergency management and disaster relief programs.

Question—Shall **HB 99** be finally passed?

HB 99 was again finally passed by the following vote: Yeas 23, Nays 1.

Nays: Cain.

Absent: Barrientos, Fraser.

Absent-excused: Armbrister, Brown, Lucio, Truan, Wentworth.

COMMITTEE SUBSTITUTE HOUSE BILL 172 ON SECOND READING

The Presiding Officer laid before the Senate **CSHB 172** on its second reading and passage to third reading. The bill was read second time, Floor Amendment No. 3 was offered, and further consideration was postponed to a time certain of 2:00 p.m. today.

CSHB 172, Relating to project contract claims against a unit of state government.

Question—Shall Floor Amendment No. 3 to **CSHB 172** be adopted?

The amendment was adopted by a viva voce vote.

CSHB 172 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Shapiro asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 172 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 172** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Nays: Shapiro.

Absent-excused: Armbrister, Brown, Lucio, Truan, Wentworth.

CSHB 172 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Shapiro asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2697 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2697, Relating to the salary from the state of a district judge who serves as a local administrative district judge.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2697** by adding the following sections, appropriately numbered, and renumbering existing sections appropriately:

SECTION ___. Subsection (b), Section 24.376, Government Code, is amended to read as follows:

(b) The 197th district court shall give preference to juvenile and family law matters [criminal cases].

SECTION ___. Section 24.385, Government Code, is amended to read as follows:

Sec. 24.385. 206TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 206th Judicial District is composed of Hidalgo County.

(b) The 206th District Court shall give preference to juvenile and family law matters.

The amendment was read and was adopted by a viva voce vote.

HB 2697 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2697 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2697** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Brown, Lucio, Truan, Wentworth.

HB 2697 was read third time and was passed by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Ogden and by unanimous consent, the vote by which **HJR 104** was finally passed was reconsidered.

HJR 104, Proposing a constitutional amendment relating to eliminating duplicate numbering in and certain obsolete provisions of the Texas Constitution.

Question—Shall **HJR 104** be finally passed?

Senator Ogden offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **HJR 104** on third reading by striking SECTION 7 of the resolution, which amends Section 3, Article VII, Texas Constitution, and renumbering the subsequent sections appropriately.

The amendment was read and was adopted by unanimous consent.

HJR 104 as amended was again finally passed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Brown, Lucio, Truan, Wentworth.

RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled resolutions in the presence of the Senate: **SCR 109, SCR 110**

MOTION TO ADJOURN

On motion of Senator Ogden and by unanimous consent, the Senate at 2:29 p.m. agreed to adjourn, subject to receipt of Messages from the House, until 9:30 a.m. tomorrow.

AT EASE

The Presiding Officer, Senator Sibley in Chair, at 2:29 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator West at 3:23 p.m. called the Senate to order as In Legislative Session.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2906

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2906** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

RATLIFF	WOLENS
CAIN	RAMSAY
CARONA	HILBERT
	HUNTER
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Wednesday, May 28, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 219, In memory of United States Border Patrol Agent Jefferson Barr.

HCR 303, In memory of Major Audie Murphy.

HCR 308, Commemorating Dr. George F. Hamm's distinguished tenure as president of The University of Texas at Tyler.

SB 294, Relating to a study project involving the use of computer networks in public schools.
(Committee Substitute)

SCR 102, Paying tribute to the memory of Assistant Fire Chief Dennis W. Holder.

SCR 104, Expressing deep appreciation to Rita Tyson.

THE HOUSE HAS PASSED THE FOLLOWING MEASURES: LOCAL, CONSENT, AND RESOLUTIONS CALENDAR

HCR 278, Directing the Department of Public Safety to study the feasibility of implementing a COP program statewide.

HCR 279, Directing the Texas Department of Health to study the state's implementation of the federal requirements under EPCRA.

SB 24, Relating to the terms of the district courts in Bowie County.

SB 61, Relating to the penalty for failure to report abuse of persons who are elderly or disabled.

SB 73, Relating to financial statements filed by judges of statutory county courts and statutory probate courts.

SB 115, Relating to certain investigations conducted by the Department of Protective and Regulatory Services.

SB 322, Relating to the filing of a petition stating an essential need for operating a motor vehicle.

SB 324, Relating to application of the professional prosecutors law to the district attorney of the 24th Judicial District.

SB 344, Relating to an exemption from ad valorem taxation for certain property acquired for use for a school.

SB 485, Relating to the joint listing on an ad valorem tax appraisal roll of separate interests in minerals in place.

SB 521, Relating to parental consent for certain activities in public schools. (Committee Substitute)

SB 577, Relating to licensing and registration requirements under The Real Estate License Act; providing a penalty.

SB 607, Relating to the assignment of certain appellate judges and justices as visiting judges.

SB 636, Relating to assistance to certain surface coal mining operators in the preparation of surface coal mining permit applications and to the eligibility of land and water affected by coal mining for reclamation or abatement expenditures.

SB 642, Relating to abatement of common nuisances.
(Amended)

SB 921, Relating to the creation of the East Montgomery County Improvement District; authorizing a tax.

SB 1066, Relating to procurement practices by health and human services agencies, by certain other agencies with programs related to health or human

services, and by certain public and private local providers of health or human services.
(Committee Substitute/Amended)

SB 1107, Relating to the provision of financial assistance to survivors of certain law enforcement officers, firefighters, and others.
(Committee Substitute/Amended)

SB 1153, Relating to the appraisal and ad valorem taxation of certain types of personal property.
(Committee Substitute)

SB 1221, Relating to restricting written reports required from public school employees.

SB 1240, Relating to the state's purchasing of services for state agency clients.

SB 1249, Relating to the sale of property for delinquent ad valorem taxes.
(Amended)

SB 1263, Relating to requiring the Texas Workforce Commission, local workforce development boards and centers, and certain employers to provide tax assistance to certain individuals and families.
(Amended)

SB 1291, Relating to permitting policyholder dividends for multiple lines of insurance.

SB 1309, Relating to the regulation of the use of electroconvulsive therapy.

SB 1384, Relating to counseling for certain persons in a suit for divorce or a suit affecting the parent-child relationship.

SB 1412, Relating to conduct requiring registration under the lobbying statute.

SB 1453, Relating to approval of the comptroller's account against the state.

SB 1469, Relating to certain construction projects managed by the General Services Commission.

SB 1486, Relating to the regulation of motor carriers.
(Committee Substitute/Amended)

SB 1563, Relating to the objection to certain assigned judges.
(Committee Substitute)

SB 1576, Relating to the development of performance measures by the Texas Agricultural Finance Authority.

SB 1582, Relating to the creation, administration, powers, duties, operation, and financing of the Guadalupe County Groundwater Conservation District.
(Committee Substitute)

SB 1653, Relating to campus or campus program charters.

SB 1766, Relating to the creation, administration, powers, duties, operations, and financing of the Westworth Village-White Settlement Redevelopment Authority; granting the power of eminent domain.
(Amended)

SB 1787, Relating to the restricted sale of wine for off-premises consumption by the holder of a winery permit in certain areas.

SB 1831, Relating to sanitary facilities required on the premises of certain applicants for an alcoholic beverage license.
(Amended)

SB 1910, Relating to the regulation of poultry operations.
(Committee Substitute)

SB 1918, Relating to the operation and administration of the Texas School for the Deaf.

SB 1919, Relating to the operation and administration of the Texas School for the Blind and Visually Impaired.

SB 1942, Relating to the creation, administration, powers, duties, operation, and financing of the Culberson County Groundwater Conservation District; granting the power of eminent domain; authorizing the issuance of bonds and the imposition of taxes.
(Amended)

SB 1943, Relating to validating the creation and certain actions of the Comal County Fresh Water Supply District No. 1.
(Amended)

SB 1949, Relating to the powers, duties, administration, financing, and operation of the Falcon's Lair Utility and Reclamation District; granting the authority to issue bonds.
(Amended)

SB 1955, Relating to the transfer of certain occupational certification and licensing programs administered by the Texas Natural Resource Conservation Commission.

SB 1956, Relating to the municipal courts of record in Garland.

SCR 44, Encouraging the Texas Board of Criminal Justice, Texas Youth Commission, Juvenile Probation Commission, county commissioners, and sheriffs to support faith-based correctional programming and facilities.
(Amended)

SCR 51, Directing the Texas Department of Commerce to increase technology-based investments in the state.

SCR 77, Recommending that the purchase of the Allens Creek Reservoir site be ranked as a high priority by the Texas Water Development Board.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

LEGISLATIVE POLICY RESOLUTION

SR 913 - by West: Authorizing the creation of a commission to study the creation of an institution of higher education to be located in the southern portion of Dallas County.

MEMORIAL RESOLUTIONS

SR 909 - by Shapiro: In memory of John Douglas Witherspoon of McKinney.

HCR 45 - (Patterson): In memory of Edna Seinsheimer Levin of Galveston.

HCR 304 - (Whitmire): In memory of Naomi Stribling Vanduring of Houston.

CONGRATULATORY RESOLUTIONS

SR 898 - by Armbrister: Commending the State Firemen's and Fire Marshals' Association and the Volunteer Fire Departments of Texas.

SR 899 - by Lucio: Commending A. Cynthia Leon of San Antonio.

SR 900 - by Cain: Commending Congressman Ralph Moody Hall of Rockwall.

SR 901 - by Cain: Congratulating Virginia Mae and Dorsey Gene Erwin of Campbell.

SR 902 - by Cain: Congratulating Helen Annette and James Marvin Lovell of Terrell.

SR 903 - by Cain: Congratulating Frances and Roy Hawkins of Commerce.

SR 904 - by Cain: Congratulating Mr. and Mrs. Earl C. Bills of Savoy.

SR 905 - by Cain: Congratulating Norma and Robert Mitchell of Greenville.

SR 910 - by Lucio: Commending Bill Montigel of Fort Worth.

SR 911 - by Lucio: Commending Albert Ochoa.

SR 912 - by Lucio: Congratulating Raul Besteiro, Jr., of Brownsville.

SR 914 - by Truan: Congratulating Lottie Belle Mayo Harlan of Bishop.

SR 915 - by Truan: Congratulating the Texas Association of Mexican American Chambers of Commerce (TAMACC).

HCR 213 - (Patterson): Congratulating the Friendswood High School Academic Decathlon Team.

HCR 277 - (Cain): Congratulating Willie Lee Campbell Glass.

MISCELLANEOUS RESOLUTIONS

SR 873 - by Brown, Patterson: Recognizing May 25-31, 1997, as Texas Space and Technology Week.

HCR 124 - (West): Recognizing March 12, 1997, as Grand Prairie Day at the Capitol.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 3:24 p.m. adjourned, in memory of Roel Garcia of Falfurrias and the Central Texans who lost their lives in yesterday's tornado, until 9:30 a.m. tomorrow.

APPENDIX

SENT TO COMPTROLLER

May 26, 1997

SB 461

SIGNED BY GOVERNOR

May 27, 1997

SB 67, SB 145, SB 264, SB 358, SB 417, SB 459, SB 478, SB 514, SB 600, SB 623, SB 728, SB 771, SB 786, SB 939, SB 1014, SB 1016, SB 1033, SB 1108, SB 1127, SB 1202, SB 1233, SB 1268, SB 1269, SB 1295, SB 1352, SB 1388, SB 1519, SB 1722, SB 1736, SB 1828, SB 1903, SB 1924, SCR 99

SENT TO SECRETARY OF STATE

May 28, 1997

SJR 39

SENT TO GOVERNOR

May 28, 1997

SB 81, SB 89, SB 168, SB 197, SB 271, SB 395, SB 506, SB 551, SB 745, SB 910, SB 1262, SB 1286, SB 1460, SB 1702, SB 1739, SB 1793, SB 1930, SCR 105

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

MESSAGE

I hereby agree to return **SB 1437** to the Senate for further consideration at the request of the Legislature presented by **SCR 99**.

Article IV, Section 14, of the Texas Constitution directs when and how the Governor can approve or veto any bill passed by both houses of the Legislature. In this instance, the Governor has taken no action on Senate Bill No. 1437 and the Legislature has requested by Senate Concurrent Resolution No. 99 that Senate Bill No. 1437 be returned to the Senate. Pursuant to established case law, and while under no obligation to comply with the request, Senate Bill No. 1437 is hereby returned to the Senate for further consideration.

/s/Governor George W. Bush
May 27, 1997

In Memory

of

Roel Garcia

Senator Truan offered the following resolution:

(Senate Resolution 860)

WHEREAS, It is with great sorrow that the Texas Senate learned of the tragic loss of Texas Department of Public Safety Trooper Roel Garcia, who died March 26, 1997, at the age of 37; and

WHEREAS, Highly respected among his colleagues, Corporal Garcia had been with the Department of Public Safety since 1981; recently assigned to the Combined Law Enforcement Division, he was on his way to Raymondville to participate in a drug task force when he was killed in a tragic automobile accident; and

WHEREAS, A native of Falfurrias, Texas, Roel was born on August 24, 1959, to Humberto and Elda Garcia; he graduated from Falfurrias High School and attended Del Mar College; during his youth he lived with his grandfather and grandmother in Brooks County, where his grandfather was the Brooks County jailer; and

WHEREAS, He joined the Department of Public Safety in June of 1981 and was stationed in El Campo for four years before being transferred to Falfurrias; honored for his valuable contributions to the citizens of Texas, Mr. Garcia received a Director's Citation in recognition of 20 drug interdiction cases he initiated in 1993; he was also the recipient of numerous commendation letters; and

WHEREAS, In addition to his work as a trooper, Corporal Garcia taught courses in the department's specialized schools, including drug interdiction, performance driving, and firearms; and

WHEREAS, A dedicated public servant whose career was highlighted by his accomplishments over the past 16 years, Corporal Garcia will be deeply missed by his fellow officers and all those who were privileged to work with him throughout his distinguished career; and

WHEREAS, The State of Texas has lost one of its most valuable citizens, but Roel Garcia's exemplary life will continue to inspire those who follow his profession; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby extend sincere condolences to the family of Corporal Roel Garcia: his daughters, Sarah and Victoria; his parents, Humberto and Elda Garcia; his sister, Louella Mora; his brothers, Homer and Humberto Garcia, Jr., and his grandmother, Elica Garcia; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas

Senate, and that when the Senate adjourns this day, it do so in memory of Roel Garcia.

The resolution was again read.

The resolution was previously adopted on Monday, May 26, 1997. The names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

Senator Truan was recognized and introduced to the Senate family members of Roel Garcia: his mother Elda Noemi Garcia, his daughters Sarah and Victoria Garcia, his brother Humberto Garcia, Jr., his sister Louella Mora and her husband Calixto Mora, Jr., his aunt Nora Soliz, and his cousins Cassandra Lynn Soliz and Gus Barrera. Accompanying the family were Texas Department of Public Safety representatives: Colonel Dudley Thomas, Director; Tommy Davis, Assistant Director; Bobby Holt, Member of the Public Safety Commission; Albert Rodriguez, Commander of Training; and David McEathron, Chief of Traffic Law Enforcement.

The Senate extended its sympathy to the family and welcomed its guests.